



ENVIRONMENTAL ASSESSMENT BOARD

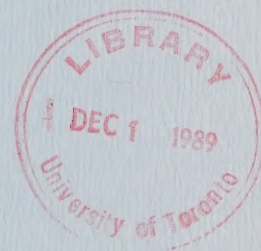
VOLUME: 160

DATE: Tuesday, November 21st, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



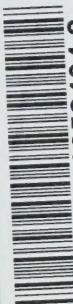
FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

FARR &
ASSOCIATES
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

CA20N
EAB
-H26





Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116524042>

CA20N
EAB
-H26



ENVIRONMENTAL ASSESSMENT BOARD

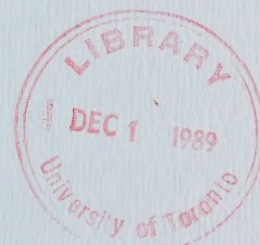
VOLUME: 160

DATE: Tuesday, November 21st, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

EARR
ASSOCIATES &
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, November 21st,
1989, commencing at 8:30 a.m.

VOLUME 160

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS
	OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL
	FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM
	ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS &
	ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF
	FORESTRY (CENTRAL
	ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN
	DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY
	ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON
	WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN EDWARD OSBORN,</u> <u>JOHN CARY,</u> <u>DAVID GORDON,</u> <u>WILLIAM STRAIGHT,</u> <u>DAVID EULER,</u> <u>JAMES ALEXANDER MacLEAN,</u> <u>TOM TWORZYANSKI, Resumed</u>	27981
Continued Cross-Examination by Mr. Lindgren	27981

SUBMISSIONS

Ms. Murphy (MNR).....	28235
Mr. Lindgren (FFT).....	28243
Ms. Seaborn (MOE).....	28296
Ms. Kleer (NAN).....	28302
Mr. Edwards (NOTOA).....	28306
Dr. Quinney (OFAH).....	28313

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
946	Memo from R. M. Christie, Executive Director, Wildlife Branch to Regional Director, Algonquin and Eastern Regions, dated June 8, 1989.	28052
947	Document entitled: A Model of Bias in Lake Selection for Survey, authored by C.K. Minns, dated November, 1986.	28106
948	Letter from District Manager, Kenora District, MNR to Dr. Ross Henderson, dated September 29, 1989.	28141
949	MNR Document entitled: Review of Timber Management in Lake Superior Provincial Park dated July, 1989.	28213
950	Summary of infractions 1969-1987 re: Latchford Management Unit.	28225
951	Table of warning letters 1984-1988 re: Temagami Crown Management Unit.	28225
952	MNR letters and memos re: Latchford Crown Management Unit.	28225

1 ---Upon commencing at 8:35 a.m.

2 THE CHAIRMAN: Good morning everyone.
3 Please be seated.

4 Ms. Murphy?

5 MS. MURPHY: I would like to raise a
6 matter that arose yesterday with respect to the last
7 three documents that were filed, one being a part of
8 apparently American regulation and the other two
9 apparently being part of some kind of forest plan.

10 I would just like to comment on two
11 matters. First of all, as I understand it, my friend
12 is intending to ask these witnesses to deal with the
13 regulation. I would be concerned, Mr. Chairman, if you
14 are being provided evidence about American law by a
15 lawyer who hadn't been qualified, let alone by
16 witnesses. So I would like to point out that there is
17 a problem.

18 These witnesses, I would suggest to you,
19 don't know whether this has been applied, whether there
20 is any case law with respect to it or anything of that
21 matter, so I caution you there.

22 My other difficulty is with filing
23 portions of what I understand from my friend is at
24 least a seven-volume document. Interestingly enough,
25 most recently it was Ms. Swenarchuk who argued that it

1 was inappropriate to file portions of plans and that
2 was in a situation where this Board knows the planning
3 system, knows what's expected to be the outcome and so
4 forth, and here you have a situation where the system
5 hasn't been proved or discuss and we have had no
6 opportunity to determine what is in the entire plan.

7 So I would like to just raise those two
8 concerns with you, Mr. Chairman.

9 THE CHAIRMAN: Mr. Lindgren, how far are
10 you going to go with the regulation other than in going
11 farther than just pointing out to the witnesses that a
12 particular regulation contains a particular provision?

13 MR. LINDGREN: That's correct.

14 THE CHAIRMAN: Or are you going to be
15 relying on the application of that provision in any
16 way?

17 MR. LINDGREN: Mr. Chairman, my intention
18 with respect to the regulation is to merely indicate
19 that it's illustrative of a process. It embodies
20 certain concepts that I would like an opinion from
21 these witnesses on as to whether --

22 THE CHAIRMAN: Well, it may not be
23 illustrative of a process either.

24 MS. MURPHY: That's right.

25 THE CHAIRMAN: I mean, this is I think

1 Ms. Murphy's objection.

2 To give you an example. Somebody could
3 look at the Environmental Assessment Act of Ontario in
4 1976, -7, -8 and -9 and not realize that in those years
5 there had not been one hearing before the hearing
6 Board, the Environmental Assessment Board, set out in
7 that legislation. It may indicative of a process but
8 in fact there was no jurisprudence, there were no Board
9 decisions, there was no practice in procedure in those
10 years under the Environmental Assessment Act. Why?
11 Because the government of the day decided for whatever
12 reasons not to apply it and not to refer anything to
13 the Board for a hearing. The first hearing, as I
14 recall, was in 1980.

15 Now, that's just an example of the fact
16 that there may be legislation on the books, it does not
17 necessarily say anything about a process that may or
18 may not be in force.

19 MS. MURPHY: I am sorry, equally
20 important is the converse; if that had been applied and
21 there had been some determination on the interpretation
22 of those sections, that would also be important.

23 THE CHAIRMAN: Yes. I think Ms. Murphy's
24 objection is well founded, so that we want to know just
25 how far you are going to go in this area without

1 bringing in evidence to show what in fact is happening
2 with that particular process.

3 MR. LINDGREN: Mr. Chairman, I don't
4 think it would be desirable or advisable to require the
5 parties to formally prove the law in other
6 jurisdictions.

7 To this point, Mr. Chairman, we have had
8 extracts of Canadian law and American law introduced
9 with little or no objection from any of the parties.
10 My intention here is simply to refer to a passage or
11 two in the regulation and to ask these gentlemen for
12 their opinion on it, and I go no further than that.

13 THE CHAIRMAN: Well, it may on a prima
14 facie basis purport to say something, purport to
15 indicate what the process is about, these witnesses can
16 comment on it; as far as the weight we will give to it,
17 that's another matter.

18 MR. LINDGREN: That's correct, sir.
19 However, I am not asking them for their opinion on this
20 particular -- as to whether or not it works well in the
21 United States or whether or not there have been
22 interpretation problems or whether or not there is a
23 convoluted case law.

24 THE CHAIRMAN: What's its value then?

25 MR. LINDGREN: The value is to see

1 whether or not the concept, as they understand it,
2 would be applicable or should be made applicable here
3 in Ontario.

4 I think that the appropriateness of those
5 questions may be more understandable once they are put.
6 If there is an objection to them, I will deal with them
7 at that time.

8 THE CHAIRMAN: Now, as far as filing the
9 whole of the documents or at least providing one copy
10 to the witnesses of the whole of the document, what do
11 you have to say about that, so that it can be placed in
12 its appropriate context?

13 MR. LINDGREN: That's correct. Mr.
14 Chairman, this is a multi-volume plan. I unfortunately
15 brought only one of the volumes, the rest are in
16 Toronto. I can certainly undertake to provide a copy
17 to Ms. Murphy so that she can have it to review as soon
18 as possible and certainly have it to lead any questions
19 in re-examination on it.

20 We certainly can't undertake to file
21 copies with the parties.

22 THE CHAIRMAN: Well, when documents are
23 voluminous the Board doesn't require that. But in
24 fairness to the parties, they should be given access to
25 an entire document, at least one copy, so that if they

1 want to read it it is within their purview to do so.

2 MR. LINDGREN: That's correct. And Mr.
3 Huff just advises me that we are certainly prepared to
4 use our best efforts to obtain a second copy and make
5 that available in the reading room as a reference for
6 any party.

7 MS. MURPHY: My concern isn't my ability
8 to review the document before re-examination, my
9 concern is that the witnesses are apparently going to
10 be asked to comment on a portion of the document
11 without their ability to know whether there are other
12 portions of that voluminous documentation that applies,
13 whether what they are attempting to talk about here is
14 related to anything else in the plan.

15 From the pieces I have here, I understand
16 this is a 15-year plan. That may be very important.
17 These people don't have the opportunity to review it.
18 That's what I am concerned about.

19 MR. LINDGREN: Mr. Chairman, the extracts
20 that I have filed I think are self-contained and
21 self-explanatory portions of those plans, however --

22 MS. MURPHY: That's his evidence.

23 THE CHAIRMAN: Well, that's your
24 interpretation.

25 MR. LINDGREN: That's right, which is

1 precisely why I have undertaken to provide the full
2 copy -- the full volume set.

3 THE CHAIRMAN: All right. Let's go on
4 with the questions regarding these documents, we will
5 take it from there, we will take into account the fact
6 that the witnesses haven't seen the full document and
7 perhaps be in a position of having to give it the
8 appropriate weight.

9 MR. LINDGREN: Thank you, Mr. Chairman.

10 JOHN EDWARD OSBORN,
11 JOHN CARY,
12 DAVID GORDON,
13 WILLIAM STRAIGHT,
14 DAVID EULER,
15 JAMES ALEXANDER MacLEAN,
16 TOM TWORZYANSKI, Resumed

17 CONTINUED CROSS-EXAMINATION BY MR. LINDGREN:

18 Q. Mr. Straight, when we left off
19 yesterday afternoon I believe we were looking at page
20 47 of the American regulations and, in particular, we
21 were looking at paragraph (d) which is subtitled
22 Inventory Data and Information Collection.

23 Do you have that paragraph, Mr. Straight?

24 MR. STRAIGHT: A. Yes, I do.

25 Q. As we discussed yesterday, there is
26 an indication at the beginning of that paragraph that:

27 "Each forest supervisor shall obtain and
28 keep current inventory data appropriate

1 for planning and managing the resources
2 under his or her administrative
3 jurisdiction..."

4 And skipping the next line:

5 "This may require that special
6 inventories or studies be prepared."

7 Now, stopping right there, Mr. Straight,
8 and leaving aside the FRI here in Ontario, can you
9 confirm for me that there is no requirement in Ontario
10 that MNR resource managers compile and keep current
11 comprehensive inventories of non-timber resources under
12 their jurisdiction?

13 A. I guess the difficulty I have in
14 responding to some of your questions is, is that you
15 are using the guise of this particular segment of this
16 regulation which really confers totally different
17 concepts to me as a resource manager than what we are
18 dealing with in our application here in the Class EA.

19 We have described previously, for
20 example, what our information available to the
21 undertaking is back in Panel 7. Mr. Gordon has
22 indicated to you some of the funding estimates and
23 costing of how we intend to see that basic inventory to
24 conduct timber management improved.

25 Those -- that is the evidence of other

1 people that has been presented. This, as you are
2 aware, is a forest plan, it is not a timber management
3 plan as we see it. So indeed I do have a fair bit of
4 difficulty in responding to your question.

5 Q. Well, With respect, Mr. Straight --

6 MS. MURPHY: And was the evidence of
7 Panel 7 and other panels and has been cross-examined on
8 already.

9 MR. LINDGREN: Q. Well, with respect,
10 Mr. Straight, you are a resource manager. I take it
11 you are familiar with the concept of an inventory?

12 MR. STRAIGHT: A. Well, what inventory
13 are you talking about, Mr. Lindgren?

14 Q. I am talking about an inventory of
15 non-timber values that may occur within a unit or a
16 district or a region within the area of the
17 undertaking?

18 A. That is more than what the inventory
19 referred to in this particular section is, as I would
20 interpret it, and this is the one that you are
21 leading--

22 Q. That's fair enough.

23 A. --me to answer questions about.

24 Q. That's fair enough, Mr. Straight. My
25 question to you is: Is there a requirement in Ontario

1 that a comprehensive inventory be compiled and kept
2 current for non-timber values?

3 MS. MURPHY: Is my friend suggesting that
4 this is a requirement for a comprehensive inventory of
5 non-timber values in the United States?

6 MR. LINDGREN: I think the question is
7 straightforward, Mr. Chairman. I think I can get an
8 answer, yes or no.

9 THE CHAIRMAN: Well, Ms. Murphy, let him
10 answer the question. Is an inventory of non-timber
11 values a requirement in Ontario, regardless of what the
12 document says?

13 MR. STRAIGHT: There are Ministry
14 directions regarding inventory information, Mr.
15 Chairman, and that had been previously supplied in
16 other panels.

17 MR. LINDGREN: Q. Is it your position,
18 Mr. Straight, that these policies and directives and
19 bulletins that you have just referred to, is it your
20 position that these documents in effect require the MNR
21 to compile a comprehensive list of all non-timber
22 values in the jurisdiction?

23 MR. STRAIGHT: A. Well, for example, I
24 believe you heard extensive evidence in Panel 15 about
25 values maps and AOC planning process and how we use

1 that information.

2 Panel 7 provided you information on the
3 types of information -- provided you with evidence on
4 the type of information that MNR collects to input to
5 timber management plans. At the other panels that I
6 have been in evidence -- witness at, I have heard
7 testimony that indicates the type of information that
8 MNR collects.

9 Q. Well, let me stop you right there and
10 ask you about the values map. To produce a values map,
11 does the MNR generally undertake any special
12 inventories or studies to determine where the values
13 are?

14 THE CHAIRMAN: Well, Mr. Lindgren, with
15 respect, we have heard how the values map is produced,
16 we have heard all kinds of testimony about that. So I
17 really think it is repetitive, straight repetition to
18 go into how a values map is created. We know that, it
19 has been put in evidence by several witnesses.

20 MR. LINDGREN: Very well, sir. Perhaps I
21 could move to Dr. Euler then.

22 Q. If I can ask you to turn to page 53
23 of the American regulations.

24 THE CHAIRMAN: Excuse me, you wouldn't
25 happen to have an extra copy of that regulation, would

1 you? I seem to have misplaced mine.

2 MR. HUFF: (handed)

3 THE CHAIRMAN: Thank you. What page was
4 that?

5 MR. LINDGREN: It is page 53, section
6 219.19.

7 Q. There is an indication there, Dr.
8 Euler, that:

9 "Fish and wildlife habitat shall be
10 managed to maintain viable populations of
11 existing native and desired non-native
12 vertebrate species in the planning area.
13 For planning purposes, a viable
14 population shall be regarded as one which
15 has the estimated numbers and
16 distribution of reproductive individuals
17 to ensure its continued existence is well
18 distributed in the planning area."

19 Now, stopping right there, Dr. Euler.
20 Would you agree with this definition of viable
21 population?

22 DR. EULER: A. Well, I agree that it is
23 a definition of viable populations, yes, and it is a
24 reasonable one. Does that answer your question?

25 Q. Well, let me ask you this: Does the

1 Ministry have its own definition of viable population?
2 I understand that the Ministry is committed to
3 maintaining viable populations.

4 A. Right.

5 Q. Does it have a definition of viable
6 population?

7 A. Well, we have a working definition,
8 yes, and that would be that the average annual
9 population level should be constant, that's right, so
10 it is not slightly different from this. I would judge
11 that the intent is very, very similar.

12 Q. Where in the Ministry's draft terms
13 and conditions will we find the MNR definition of
14 viable population?

15 A. I don't think it's there.

16 Q. In your professional opinion should
17 it be there?

18 A. Well, I would be very comfortable
19 having it there. I see no reason why it can't be
20 there.

21 THE CHAIRMAN: Where would you put it?

22 DR. EULER: Well, I don't know.

23 MR. LINDGREN: Well, it is conceivable,
24 Mr. Chairman, that other parties may suggest additional
25 terms and conditions and, as well, the other parties

1 may suggest amendments to the monitoring provisions.

2 THE CHAIRMAN: No, but I mean, where
3 would you put a definition?

4 MR. LINDGREN: That's a drafting problem,
5 sir, and I don't see it as an insurmountable problem.
6 It can go virtually anywhere within the term and
7 conditions.

8 MS. MURPHY: I would suggest that the
9 drafting problem comes after my friend demonstrating a
10 need for it.

11 MR. MARTEL: There is a whole section
12 though of terms in the glossary of the timber
13 management plan. Why couldn't it fit in there?

14 THE CHAIRMAN: As an example. What I am
15 suggesting is, it may not go in terms and conditions,
16 it may go in some other document such as the manual.

17 MR. LINDGREN: Q. Does that definition
18 exist in any other document at this time, Dr. Euler?

19 DR. EULER: A. Well, yes, it is in a
20 document that we are pushing through the approval
21 process. It hasn't got the final signature on it yet.

22 Q. Which document is that, Dr. Euler?

23 A. Well, that's our document that refers
24 to our featured species policy.

25 Q. Okay. We will be returning to that

1 in a few moments. Returning to page 53 of the
2 regulations, I am looking at subparagraph (a) and there
3 is an indication that:

4 "Each alternative under the plan shall
5 establish objectives for the maintenance
6 and improvement of habitat for management
7 indicator species selected under
8 paragraph (g)(1)..."

9 And then it goes on to indicate that the
10 planning for the fish and wildlife resource shall meet
11 the requirements set forth in paragraphs (a)(1) to
12 (a)(7) which is found on the next page.

13 Now, starting with paragraph --
14 subparagraph (1) at the top left-hand corner, there is
15 an indication that:

16 "Certain management indicator species
17 shall be selected..."

18 And then reading further down:

19 "...the following categories shall be
20 represented where appropriate:"

21 These are endangered or threatened plants
22 and animals that are identified on State and Federal
23 lists as endangered: Species with specific habitat
24 needs, species that are commonly hunted, trapped or
25 fished, non-game species of special interest and

1 additional plant or animal species selected because
2 their population changes are believed to indicate the
3 effects of management activities.

4 And then reading further down on the
5 left-hand column of paragraph (6):

6 "Population trends of the management
7 indicator species will be monitored and
8 relationships to habitat changes
9 determined."

10 Now, yesterday, Dr. Euler, you confirmed
11 that you have some degree of familiarity with the
12 management indicator species process. Can you confirm
13 for me that these requirements could well result in the
14 monitoring of over two dozen species?

15 A. Yes.

16 Q. Indicator species that is?

17 A. Yes, that could happen, sure.

18 Q. And this would be required of each
19 plan; a number of that magnitude could be required of
20 each plan?

21 A. Well, if you use their particular
22 system, that is certainly a possibility, quite clearly.

23 Q. Well, perhaps then I can ask you to
24 turn to Exhibit 945. This is the document that should
25 be entitled: Land and Resource Management Plan,

1 Superior National Forest.

2 A. Yes, I have that. I had called it
3 944, but if that's what you mean.

4 Q. Well, I am looking at the document
5 entitled: Land and Resource Management Plan.
6 Unfortunately some of the title has been cut off.

7 THE CHAIRMAN: That's 944 we have.

8 MR. LINDGREN: Okay.

9 ---Discussion off the record

10 THE CHAIRMAN: Which one are you talking
11 about, the short one or the long one?

12 MR. LINDGREN: The long one.

13 THE CHAIRMAN: The long one. That's 945.

14 MR. LINDGREN: That is 945.

15 DR. EULER: Okay. Yes, I have 945 here.

16 MR. LINDGREN: Okay, thank you.

17 Q. If we turn to page 5-8 of the
18 document we see a list of the monitoring requirements
19 for this particular plan or what purports to be the
20 monitoring requirements for this particular plan.

21 Then skipping to page 5-11, the second
22 item on the page, we see the requirement under the
23 regulation to monitor population trends of management
24 indicator species due to habitat changes, and then we
25 see an indication in the middle column as to what those

1 species are.

2 Can you confirm for me, Dr. Euler, that
3 this list contains some 24 species of fish and wildlife
4 that are to be monitored?

5 DR. EULER: A. Well, yes. Just a
6 moment, I will count them.

7 Q. Subject to check at a later date,
8 perhaps a later time.

9 A. Yes, that's correct.

10 Q. And while we are on the subject of
11 wildlife monitoring, can I ask you to turn to page
12 5-18.

13 MS. MURPHY: What page?

14 MR. LINDGREN: Page 5-18.

15 DR. EULER: Yes.

16 MR. LINDGREN: Q. In the top left column
17 we see the requirement to monitor population trends of
18 endangered and threatened species. There are three
19 species listed there.

20 DR. EULER: A. Yes.

21 Q. And then below that, monitoring
22 population trends of viability indicator species due to
23 habitat changes. And there are a number of species
24 listed there.

25 A. Mm-hmm.

1 THE CHAIRMAN: What is the question?

2 MR. LINDGREN: Q. Dr. Euler, in Ontario
3 we are presently practising the featured species
4 approach and featured species, as we know, are moose
5 and deer at the provincial level and locally featured
6 species such as bald eagles or osprey, yet there is no
7 requirement that the population of these species be
8 monitored at the management unit level, or the district
9 unit level, or even the regional unit level.

10 In particular, in the timber management
11 plan itself it is not required to set out the
12 monitoring program of what might be necessary to
13 monitor these populations.

14 My question, Dr. Euler, is this: Given
15 that you have indicated and the witness statement has
16 indicated that it is appropriate to assess effects and
17 effectiveness of individual timber management plans at
18 the local level; first of all, why has the Ministry
19 declined to make population monitoring a requirement
20 under the timber management planning process?

21 A. Well, it's just it doesn't matter
22 which planning process you do it as long as you do it,
23 and we have chosen not to do it in the timber
24 management planning process, we have chosen to do it in
25 another process. And it really doesn't -- I don't see

1 how it makes a difference as long as you do it, whether
2 it is in the timber management planning process or in a
3 wildlife management planning exercise.

4 These people have chosen to do it in
5 their timber plan, and that's fine, it may work well
6 for them in their circumstances and I have no argument
7 with their doing it in the set of circumstances that
8 they live in.

9 We have chosen a different route and it
10 has pros and cons just like their technique has pros
11 and cons. The key thing is: Are our populations
12 viable and are we meeting our objectives. The
13 bureaucratic tool is less important it seems to me than
14 whether we are doing what we should be doing.

15 Q. Dr. Euler, it would appear to me that
16 looking at Document 945 up to 34 species are going to
17 be monitored at the local level?

18 A. Yes.

19 Q. In Ontario, as I understand Panel
20 16's evidence, a mere handful of species will be
21 monitored but only at the provincial level. Is that a
22 fair understanding of the evidence?

23 A. Well, no, I don't think it's a fair
24 understanding and I would like to correct this
25 impression of a mere handful.

1 It is true we will be monitoring at the
2 provincial level because it seems to us that for our
3 needs that's the best way to measure it, to make sure
4 that provincially that population is viable; however,
5 we have not yet decided exactly how many species will
6 be monitored. I would anticipate it would be more than
7 a mere handful. We have got quite a monitoring job
8 ahead of us and we are undertaking that right now.

9 The first step in that monitoring process
10 is to decide which species to monitor, how many and
11 under what circumstances, and it just seems cost
12 effective and efficient to do it at the provincial
13 level as opposed to the local level in a major
14 monitoring program.

15 MR. LINDGREN: If I could have a moment,
16 Mr. Chairman.

17 Q. Can I ask you to turn to the terms
18 and conditions, Dr. Euler, which is Exhibit 700?

19 DR. EULER: A. Yes.

20 Q. And, in particular, I would ask you
21 to turn to term and condition 45. It is found at page
22 20 of the document. That draft term and condition
23 indicates that:

24 "The MNR shall ensure that the following
25 wildlife information is collected for use

1 in timber management planning..."

2 And in paragraph (a):

3 "Sites of occurrence and/or high value
4 habitat for threatened and endangered
5 species."

6 Stopping right there. What does The
7 Ministry mean by threatened and endangered species?

8 A. Well, that's defined in law and there
9 is a very specific list of wildlife species that have
10 been presented in evidence.

11 MS. MURPHY: It had been described -
12 excuse me - for the first time in Panel 6 I believe and
13 then subsequently as well.

14 DR. EULER: The most recent reference I
15 think is in Table 1 of the statement of evidence where
16 we have listed them.

17 MR. LINDGREN: Q. Dr. Euler, why aren't
18 rare species included on this list?

19 DR. EULER: A. Okay. See, what you are
20 looking at in 45 is really our habitat inventory
21 program. That's a little different than our population
22 monitoring inventory program, okay. The population
23 monitoring program is in terms and condition 57.

24 Now -- okay. So in 45 -- it is important
25 to remember that both of these things are going to be

1 occurring in the province at the same time and we hope
2 to make them work together.

3 Now, for convenience, in term and
4 condition 45 we have listed the areas that we want to
5 concentrate on in terms of our habitat inventory
6 program. So the first thing is look at species at the
7 highest risk and by definition those are threatened and
8 endangered.

9 Then in (b) you see our effort is to look
10 at moose and deer, and then in (c) we have written that
11 broadly enough so that we will be looking at a wide
12 variety of species habitats and red-shouldered hawk may
13 well occur in that particular category.

14 MS. MURPHY: For the record, I would also
15 like to indicate that in the statement of evidence for
16 Panel 6, which is Exhibit 209, page 69 of that document
17 there is a discussion of the term rare species, it
18 explains what it means, it goes on to explain while
19 something may be rare in Ontario it can be rigorous and
20 numerous elsewhere, and it went on at some length to
21 explain that.

22 THE CHAIRMAN: Okay. Ms. Murphy, we
23 realize that some of this information has been given
24 before. I don't think it is conducive to a cohesive
25 cross-examination if you pop up every two minutes to

1 tell us that it was referred to earlier. We are aware
2 of it and if we feel it is repetitious we will advise
3 Mr. Lindgren immediately.

4 If you have any major objection that is
5 crucial to the point that you feel you must rise, then
6 do so, but I think we would like Mr. Lindgren to
7 continue on as best he can with this line of
8 questioning.

9 MS. MURPHY: Thank you.

10 MR. LINDGREN: Q. Dr. Euler, this term
11 and condition goes on to indicate that habitat for
12 moose and deer will also be looked at, in paragraph (c)
13 the habitat for wildlife species of local concern will
14 also be looked at.

15 My question to you is this, Dr. Euler:
16 Why doesn't this term and condition go on to expressly
17 provide that measures shall be prescribed in a timber
18 management plan that will prevent the destruction or
19 adverse modification of this habitat?

20 DR. EULER: A. Well, it is just
21 consistent with our case, that we don't put that
22 particular information in the timber management plan,
23 we will deal with that in other documents and in other
24 ways.

25 THE CHAIRMAN: Mr. Lindgren, I think what

1 we are finding with this line of questioning is simply
2 this: Ontario has chosen to produce its timber
3 management planning in a different fashion, as you are
4 aware, than perhaps some other jurisdictions. They
5 have other resource planning methods such as wildlife
6 planning programs, which produce, as we understand it,
7 policy, conditions, restrictions, et cetera, in their
8 own right. They have to be, as we have heard, taken
9 into account in timber management planning and we have
10 heard evidence that those policies are taken into
11 account.

12 There is integrated resource management
13 in terms of the Ministry to the point that other
14 wildlife managers and other resource managers are part
15 of planning teams and in the production of the timber
16 management plans input from these resource sectors are
17 put forward.

18 It is a different system, granted, than
19 some other jurisdictions utilize, and if your questions
20 are geared towards the fact that another system may be
21 superior to ours, the one that's used in Ontario, you
22 can put those kinds of questions to the witnesses. But
23 I think the evidence is, it is not included in the same
24 manner as, for instance, it is done in the United
25 States or perhaps some other jurisdictions because

1 Ontario, for whatever reason, has chosen to go down a
2 different path, and we think that's just an empirical
3 fact.

4 Now, whether that's the best path to go
5 down is another question and that could be explored,
6 but I think the evidence is essentially: We don't do
7 it that way and that's why you don't find some of that
8 information in a timber management plan.

9 And I don't think it is particularly
10 helpful at this point to repeat the evidence that we
11 have already heard as to some of the other resource
12 sectors. But I think you can explore with this panel
13 that since we don't do it the same way as other
14 jurisdictions, in their opinion, in their professional
15 opinions, is that appropriate, should we change, should
16 we do it all as one system, including all of the
17 resource sectors in, for instance, timber management
18 plans or not?

19 Those are the areas that I think we could
20 deal with at this level because factually the Ministry
21 just doesn't do it that way. And it goes back to I
22 guess our questions of yesterday in the scoping session
23 of Dean Baskerville's comment that the Board wanted
24 clarification where he identified in the audit that
25 there are some systemic problems with the Ministry's

1 approach and yet seemed to indicate that they could be
2 alleviated if attention was paid to specified areas.
3 We will be asking him that question ourselves.

4 Is the whole system in Ontario so rotten
5 that it should all be chucked out and you start from
6 square one, or can there be improvements made by not
7 fine-tuning, but including conditions that will improve
8 things in your view or the view of your client. And I
9 think we are at that impasse.

10 You know, if what you are asking is: Why
11 don't we parallel the American system, I guess the
12 answer - and the witnesses can answer that - I take it
13 you have chosen to go a different route, and at this
14 stage of the game, I take it to the American model, you
15 would have to change things drastically; you would have
16 to pretty well throw out everything you've got and
17 start from scratch.

18 Is that the case, Dr. Euler, in terms of
19 the wildlife?

20 DR. EULER: Well, yes, Mr. Chairman. You
21 may recall that graph I showed in my evidence in Panel
22 10 with the continuum and our position on it. I have
23 it here, if you want to review it briefly, we can do
24 that.

25 MR. MARTEL: Can I ask a question then,

1 Dr. Euler?

2 How much work would it entail to move
3 from the 70 per cent protection we think we have with
4 the featured species approach to guaranteeing that in
5 fact we were going to be, as much as possible, looking
6 after 100 per cent out there?

7 I mean, that has bothered me since I have
8 heard -- with the continuum you demonstrated for us,
9 and that's bothered me, I have to admit, since that
10 time because I would like a system personally, in my
11 personal opinion, that deals with 100 per cent or
12 guarantees as much as possible the security of 100 per
13 cent out there.

14 Now, how much work would that involve,
15 entail?

16 DR. EULER: Well, the only thing that
17 stands between us and that position is money and that's
18 all it is, Mr. Martel, it is a question of resources
19 and time and effort.

20 The system that they employ in the States
21 is a very complex and expensive system and we can -- we
22 might use that system if we had more money, we might
23 not. But the bottom line is: It's going to cost a
24 great deal of money to get that assurance.

25 Could I just --

1 THE CHAIRMAN: What are you talking about
2 ballpark wise in terms of money, can you put any kind
3 of figure on it?

4 DR. EULER: Well, that is exceedingly
5 difficulty, but I know from my experience with the
6 States and my contacts with people who use this system
7 down there that it's an order of magnitude of four and
8 five times what we are spending.

9 MR. MARTEL: For the additional 30 per
10 cent?

11 DR. EULER: Yes, yes. Because to get
12 that other 30 per cent and to get assurances that you
13 are taking care of those habitat needs is a very
14 expensive process. You have to have -- well, you just
15 have to do a lot of work.

16 Now, we are moving in that direction in a
17 measured way and we have allocated more money to that
18 than has ever been allocated in the past. We have to
19 also be careful about opening the money coffer too
20 fast because it is important to spend that money
21 responsibly and carefully and well, and I think we are
22 going to achieve the objective which is viable
23 population and meeting our goals, and I am confident we
24 are going to achieve that.

25 Now, we may not use the same tools that

1 other people use. Could I just -- I brought that
2 illustration, and could I just refer back to it for a
3 moment and it might be helpful to bring us back to this
4 for just a moment. And I have some copies here of
5 this. Would it be appropriate to pass those out?

6 THE CHAIRMAN: Yes.

7 DR. EULER: People may not have it. This
8 was numbered 36 from my statement of evidence and it is
9 just as a convenience for those that don't have it or
10 haven't seen it for a while.

11 And remember what we talked about. What
12 we are talking about is complexity of management and as
13 you have more complicated management schemes, they cost
14 you more money, that's just a simple fact of life, and
15 so you are constantly trying to balance off the
16 benefits and the cost.

17 Now, we are trying to balance here just
18 to the right of featured species and we haven't gone as
19 far as the States have gone in the indicator species
20 management. And I don't mean to cast aspersions on
21 their system, for them and in their circumstances it is
22 a good system.

23 We think for right now this is the best
24 system we can employ and I suspect over time we may
25 move further in that direction. I don't know for sure

1 how far, I'm not sure how far we have to go to deal
2 with that other 30 per cent.

3 One of the things we are doing right now
4 is putting a major effort on that "30 per cent." We
5 are having a workshop early next year to address that
6 issue and decide what we might have to do to shore up
7 our featured species approach or add to it or modify it
8 in some way to make sure that we achieve our objective
9 which, remember, our objective is viable populations.

10 And I am just not sure that anyone has
11 demonstrated that indicator species is a superior way
12 of keeping viable populations necessarily. I mean, it
13 works well in the States and that's fine. We think
14 that feature species can work well here at some
15 reasonable balance between cost and benefit.

16 THE CHAIRMAN: But are you saying that to
17 get to indicator species management, in your view, you
18 are looking at an increase in what you are now spending
19 in the magnitude of four to five times?

20 DR. EULER: Oh, absolutely, Mr. Chairman.

21 MRS. KOVEN: Dr. Euler, in earlier
22 testimony I think you gave us some dollar figures
23 actually, talking about the sort of computer system
24 that's used in the United States that might be
25 applicable in Ontario. I think we had some cost

1 estimates from you there.

2 DR. EULER: Do you want me to try to
3 remember them?

4 MRS. KOVEN: No, I don't want you to, no.
5 I am just saying, I can remember that from your earlier
6 testimony.

7 DR. EULER: Yes. They have put a lot of
8 money into this program because they have developed a
9 number of computer models, they have developed a number
10 of habitat indices. Compared to us, they are spending
11 very large amounts of money and they have the financial
12 base to do that.

13 THE CHAIRMAN: How much are we spending
14 in that featured specie managemant approach now roughly
15 per annum?

16 DR. EULER: Oh boy! It is so hard for me
17 to estimate because, you see, it is all part of our
18 integrated system, so it is hard for me to pull a
19 number out of the air and say: This costs so many
20 dollars for featured species. I am really hesitant to
21 do that because it would be so easy to be just
22 completely wrong.

23 MR. MARTEL: But then how can we get a
24 handle on what it is going to cost over the long run,
25 whatever you want to call it, to move to a program

1 which would guarantee the security, if possible, of all
2 the little beasties out there unless we have a handle
3 on what we are starting from?

4 What are we starting from and what do we
5 have to move to to do that sort of thing?

6 DR. EULER: I will try to give you some
7 sense of the kind of money that we are spending. If
8 you look at the budget for just the Wildlife Branch of
9 the Ministry of Natural Resources, this is the head
10 office personnel and programs, the sort of -- and of
11 course it is head office that sets the broad policy
12 program. The budget in that is somewhere in the
13 \$10-million figure range - and please don't quote me on
14 an exact figure because I am speaking from memory and I
15 could be somewhat out of date - but that is the order
16 of magnitude that is it is.

17 Now, if we are going to go to a truly
18 effective indicator species management, that is going
19 to have to go up in the \$50- to \$60-million range, it
20 would just have to in order to collect the information
21 that is needed.

22 See, one of the problems in collecting
23 the data for indicator species management is it is
24 quite a sophisticated statistical problem and you have
25 to put a fair bit of resources into the statistical

1 side of your monitoring program, and some wildlife
2 biologists have changed from -- some of the biologists
3 in the States are advocating that they get away from
4 indicator species because it is so complex to actually
5 implement into what they call indicator guild
6 management, for example. And so the bottom line is, it
7 is going to cost a lot more money.

8 Now, you see, as a professional wildlife
9 biologist I am happy to have more money and do more
10 sophisticated things, that's what makes me happy. And
11 I assure you, if this happens I will be very, very
12 pleased, but as a responsible person as well I have to
13 point out that we have to carefully consider the pros
14 and cons of that.

15 MR. MARTEL: You would agree though that
16 involved as we are with forestry and so on, we have to
17 give some assurance to the public too though that
18 what's out there is protected?

19 DR. EULER: Absolutely, Mr. Chairman.

20 MR. MARTEL: And it's real balance.

21 DR. EULER: Exactly. If you advocate
22 that they give Wildlife Branch 60-million, I will be
23 just as happy as I can possibly be.

24 THE CHAIRMAN: Okay. It is so ordered,
25 go to it. That was easy, that's the easiest budget

1 you'll ever get paid.

2 DR. EULER: That's right. And I am glad
3 my boss is here to hear it.

4 MR. GORDON: Like a lot of other budgets.

5 THE CHAIRMAN: All right, Mr. Lindgren,
6 after that digression, let's go back to your questions.

7 MR. LINDGREN: I am not sure that was a
8 digression, Mr. Chairman, I think that was very
9 informative.

10 Q. If I can just pick up on some of the
11 comments you made, Dr. Euler. You've indicated that
12 much more money is spent in the United States
13 fulfilling the requirements of indicator species
14 management.

15 Can you confirm for me that there are
16 many more species in the continental United States than
17 there are in Ontario?

18 DR. EULER: A. Wow! I don't know. We
19 calculated 309 vertebrate species in the area of the
20 undertaking, so comparing that to all the vertebrates
21 in the United States -- is that what you want me to
22 confirm?

23 Q. That's right.

24 A. Wow!

25 Q. Just a general estimation; do we have

1 more or less?

2 A. Well, I would say less. What would
3 it be in the States? Well, let's see, it is probably,
4 I don't know, 6- or 700 maybe. I just don't know.

5 Q. Thank you, that's fine. Can you also
6 confirm that in the continental United States there is
7 a wider range of habitat and that each habitat requires
8 different indicator species?

9 A. Oh, yes. Yes, indeed. No question.

10 Q. And this --

11 A. They apply this on national forest
12 lands right from Arizona to Maine and that is a much
13 broader series of habitats, no question.

14 Q. And this is why they are spending
15 much more money?

16 A. Oh, well, no. No, I wouldn't go that
17 far, you see. The technique itself is much more
18 expensive and then when you add this kind of
19 difference, that adds even more money to it.

20 So the technique costs a lot more and
21 then they are faced with a broader variety of habitats,
22 that's right, and so that makes them spend even more
23 money.

24 THE CHAIRMAN: But you are indicating, I
25 think, that you envisage an expenditure of maybe

1 \$50-million in Ontario--

2 DR. EULER: Oh, yes.

3 THE CHAIRMAN: --within the area of the
4 undertaking to go to indicator species management?

5 DR. EULER: Yes, and that's in Wildlife
6 Branch, Mr. Chairman. I was just trying -- there would
7 be increased costs in the field too. See, I was trying
8 to indicate the kind of money that it would take in the
9 main office policy area to develop the tools, for
10 example.

11 This process in the States is a -- they
12 have a very sophisticated process of picking the
13 species and the public get involved and, oh, it is
14 sophisticated and takes a lot of effort.

15 MR. MARTEL: Once you have the system in
16 place, let's say you've had the system in place, you
17 did them, are the costs -- the annual ongoing costs
18 repeated year after year once you have a system in
19 place?

20 Would it tend then, after you have done
21 the initial work to -- you would have to monitor, I am
22 sure, but would it be as costly continuously, I guess?

23 DR. EULER: Oh, no, it would come down.
24 Yes, it would come down because you would have all your
25 systems in place and it would be much more routine and

1 the costs then would curve back down, sure.

2 You will have to bear with me in terms of
3 these numbers and magnitude of numbers because it's
4 very difficult to estimate it like this. And I am
5 trying to be helpful, but I could be wrong in some of
6 these.

7 THE CHAIRMAN: But even if you went to
8 that point in the continuum in your diagram, does that
9 guarantee you a hundred per cent?

10 DR. EULER: No, it doesn't, Mr. Chairman.

11 THE CHAIRMAN: You still have got to the
12 end of the continuum?

13 DR. EULER: That's right. You have got
14 to go to the end to guarantee.

15 THE CHAIRMAN: And the --

16 DR. EULER: As soon as -- I'm sorry.

17 THE CHAIRMAN: Sorry. And the U.S. isn't
18 there either?

19 DR. EULER: No, they are not. And one of
20 the criticisms that their biologists make in general is
21 that they still haven't got to a hundred per cent.

22 Now, they are closer or they are beyond
23 the 70, they are closer to a hundred than we are, there
24 is no question about that, but when you start using
25 terms like guarantee and assure and you get into that

1 frame of discussion, it really becomes difficult.

2 MR. MARTEL: But beyond death and taxes
3 there is not very much that's sure out there.

4 I mean, we are talking about how far can
5 we go in the next step really. I mean, we are looking
6 to see how much it's possible to ensure or try to
7 ensure the security of what is out there and, you know,
8 that's why I raised it and that is a genuine concern.

9 So that a hundred per cent I don't think
10 you could ever guarantee; could you?

11 DR. EULER: No, I don't think you could.
12 We could be closer than 70, I don't think we will ever
13 reach a hundred.

14 MR. LINDGREN: Q. Just to perhaps ask a
15 few final questions on this subject matter. I have
16 attained a copy of Volume 83 of the transcript. This
17 is the Panel 10 evidence that you gave with respect to
18 this very issue, and at page 13943 you state the
19 following - this is after you had discussed the various
20 management strategies.

21 MS. BLASTORAH: Could I have the volume
22 number again?

23 MR. LINDGREN: Volume 83, page 13943.

24 Q. Dr. Euler, I would just like to read
25 your two comments, two statements and perhaps ask you a

1 further question on it.

2 And now that you have the transcript in
3 front of you perhaps we can both do it. The third full
4 paragraph, you state that:

5 "I see the multi-species management as a
6 kind of vision, a goal to be striving
7 for and be working towards and I would
8 hope, as a professional biologist at
9 least, that we might leap over the
10 indicator species management and go right
11 to this part under the continuum because
12 I am convinced, based on my discussion
13 with the U.S. authorities, that it
14 wouldn't be good for us to stop here,
15 they are just having too many problems."

16 Mr. Freidin asked you:

17 "Here being the indicator species
18 management?

19 DR. EULER: That's right."

20 Now, Dr. Euler, given those comments or
21 in light of those comments, can you advise me if the
22 MNR is in fact undertaking any studies or initiatives
23 to determine if and when it should make the move from
24 featured species to perhaps multi-species management?

25 DR. EULER: A. Oh yes, we are. One of

1 the things we are doing - and you will note this in the
2 update - is we are commissioning an analytical paper
3 to -- and we are going to ask someone to review all of
4 these management systems for us and give us the pros
5 and cons and thoroughly review the literature.

6 We are asking this person to go to some
7 other agencies that use other techniques, talk to the
8 people and give us their firsthand experience,
9 and furthermore, then we are asking that person to give
10 us some seminars so that MNR managers can begin to come
11 to grips with the pros and cons of these other systems.

12 See, I am a professional biologist first
13 and that's why I made that statement. As a
14 professional biologist I would love to be at the
15 multi-species management, that's fun, that's why I
16 became a biologist. And if we can get there, and if
17 Mr. Chairman is going to give us a lot more money, I
18 will be just as happy as I can be.

19 I don't know where the money is going to
20 come from, but that's not my problem.

21 Q. Aside from this analytical paper that
22 you've just referred to, are there any other
23 initiatives or studies that are underway?

24 A. To evaluate whether we should move
25 you mean?

1 Q. That's correct.

2 A. Well, there are other studies
3 underway but none that address the issue of management
4 strategies. For example, we are also looking at
5 habitat supply analysis; however, remember that's a
6 tool, that's a technique that can be used in various
7 strategies.

8 And then of course -- well, I should
9 mention our other wildlife effectiveness monitoring,
10 because what we are going to do there is we are
11 entering the workshop format, we are going to enter
12 that workshop with as an open mind as possible and we
13 only have one ground rule is, we are not going to talk
14 about moose and deer, and that's because we have
15 already talked about moose and deer plenty, and now we
16 need to come to grips with all these other species.

17 We are going to bring as many experts as
18 we can into that room and talk about how best to deal
19 with the impact of timber management on those other
20 species.

21 Q. In light of the fact that the
22 Ministry is undertaking this analytical study and is
23 undertaking a review of habitat supply analysis and
24 it's undertaking the effectiveness monitoring program,
25 Dr. Euler, is it fair to say that the Ministry is

1 contemplating or even preparing to move beyond featured
2 species and that featured species is at best an interim
3 strategy in this province?

4 A. Well, you see, I wouldn't put it
5 quite that way. I would put it that what we are trying
6 to do is do the best management we can at any point in
7 time, but also trying to be aware of all the other
8 options available to us and, as soon as those options
9 are known to be better, we will go to them.

10 And so I wouldn't like to use the word
11 interim, it's what we do, we've come to that position
12 as a reasonable compromise and we will move to a better
13 one just as soon as we have evidence that the better
14 one is better.

15 So if we could be convinced that
16 indicator species was better for us in our
17 circumstance, we would go to it, and we had the money
18 of course.

19 Q. Now, what kind of evidence would
20 cause the Ministry to move from featured species to,
21 for example, the multi-species management?

22 A. Well, I can talk about the kind of
23 evidence. One, the new tool or strategy is better at
24 maintaining viable populations, it gives a higher
25 degree of assurance that we are dealing with species

1 that we are not currently dealing with, that it's more
2 cost effective. All those kinds of evidence would be
3 used then to make a decision to go to the better
4 approach.

5 MR. MARTEL: Can I ask another question?
6 Dr. Euler, can a society afford not to do it? Based on
7 everything we are hearing about, what's going on in
8 Brazil in the rain forests there and how society
9 depends on different cycles and so on, the food chain,
10 the whole business, can we afford not to move?

11 DR. EULER: No, sir, Mr. Chairman, I
12 think we can, I think that even taking that \$50- to
13 \$60-million bill, in my personal value system, that's a
14 very reasonable price to pay for a benefit that is
15 substantially greater than the one we have now, yes.

16 All right. I agree with you, we can't
17 afford not to do it, and that's a personal opinion of
18 course, as you understand.

19 MR. MARTEL: Well, everybody is in the
20 same boat, you make a judgment value or...

21 DR. EULER: That's right.

22 THE CHAIRMAN: So what do you do if we
23 are supposed to go there and the money is not available
24 to get there?

25 DR. EULER: Well, you do the best you can

1 and you try to achieve the objectives using the tool
2 and the money that's available to you as a manager.

3 THE CHAIRMAN: But what options does it
4 allow a Board such as this?

5 DR. EULER: In terms of what, Mr.
6 Chairman?

7 THE CHAIRMAN: In terms of saying: You
8 have to go to multi-species approach tomorrow or
9 indicator species approach, period?

10 DR. EULER: Well, I think your options
11 are limited if you don't have --

12 THE CHAIRMAN: Without the ability for
13 the same Board to say: And here is the money.

14 DR. EULER: Well, exactly. That really
15 limits your options in my view, Mr. Chairman, because
16 if you order us to go to indicator species management,
17 we can want to do that desperately and we can try hard,
18 but if the money isn't there, we are not going to get
19 there.

20 MR. LINDGREN: Q. Dr. Euler, isn't it
21 more accurate to say that the Ministry's options are
22 limited if the Board requires that in the form of a
23 condition to the approval?

24 I mean, that's the same consideration
25 that applies to all terms and conditions. As I

1 understand it, the Board could very well order that a
2 particular condition be fulfilled, if the Ministry for
3 whatever reason doesn't have the money, that's the
4 Ministry's problem and not the Board's.

5 THE CHAIRMAN: What does it do if -- take
6 it one step further, assume the Board orders something
7 like that as a condition of approval, no more featured
8 specie management approach; you are going, effective as
9 of the date of the decision, to indicator species
10 management or multi-species management. What's the
11 option if the money just isn't available?

12 MR. LINDGREN: We did have a brief
13 discussion of this matter last week, Mr. Chairman, as
14 you recall. If the Board imposes that as a condition,
15 the Ministry effectively has two options, either find
16 the money or not accept the approval as qualified by
17 the Board.

18 MR. CASSIDY: That's a matter of
19 argument. That whole issue, Mr. Chairman, is not a
20 matter of cross-examination of the evidence.

21 THE CHAIRMAN: No, you're --

22 MR. CASSIDY: I don't mean to deflect
23 your question, but you are going to want to hear
24 argument on that I suspect from a number of parties and
25 it may be appropriate, if you want to raise it, to have

1 other counsel present, fine, but it may be appropriate
2 to perhaps save it...

3 THE CHAIRMAN: Well, it probably should
4 better be left for argument, but there are practical
5 considerations that any Board has to look at in terms
6 of exercising its powers, put it that way.

7 Sure, we could do anything; you know, we
8 have a wide range of powers, but it doesn't do a lot of
9 good for a Board to exercise those powers in a fashion
10 which is difficult, if not impossible, for conditions
11 to be implemented. And we will have to save that for a
12 further time.

13 MR. LINDGREN: That's fine, Mr. Chairman.

14 Q. Dr. Euler, over the past few moments
15 we have had extensive discussions on the economic
16 considerations that come into play here. My question
17 is this: Other than money, what has prevented us from
18 moving in that direction?

19 DR. EULER: A. You mean moving in which
20 direction?

21 Q. From featured species to a more
22 sophisticated management system.

23 A. I don't think anything other than
24 money.

25 Q. Just one final question on that

1 point. You mentioned that the Ministry is undertaking
2 an analytical study that will involve a workshop of
3 some sort. Other than the workshop, what kind of
4 stakeholder input or consultation can we expect to see
5 on the development of that analytical study?

6 A. Development of the analytical study.
7 Yes, I'm sorry, I was sort of musing out loud. Because
8 I'm having -- I'm just having a little trouble
9 understanding your question.

10 Q. You have referred to an analytical
11 study that will be soon undertaken by the Ministry or
12 by a person contracted by the Ministry?

13 A. Right, and that is outlined in the
14 update of October 5th, yes.

15 Q. Okay. And I take it that you are
16 familiar with the terms of reference for that study?

17 A. Yes.

18 Q. My question is: What provisions have
19 been made for stakeholder consultation or stakeholder
20 input while that study is underway?

21 A. Well, we won't have stakeholder input
22 while the study is underway because the study, the
23 analytical paper is a piece of professional work.

24 Once that is finished, then that paper
25 would be widely available to everyone who wished to see

1 it. It's a piece of analytical work by a professional
2 in which he outlines in a professional way the pros and
3 cons of the various strategies as best he can.

4 So we are going to say: Okay, go do the
5 analytical paper, and nobody is going to interfere with
6 him, because we want that to come back as operative as
7 it can, we want it to be a first rate professional job,
8 so we are putting a fair dollar into it. And then when
9 it comes back we will give it wide circulation.

10 And remember, it will -- it isn't going
11 to -- it's going to be the basis for decision-making,
12 it isn't going to make decisions itself, it's going to
13 say: Here are the strategies and here are the pros and
14 cons, here are some experiences that people have had,
15 and it costs so much, and they had this problem and
16 they had that problem, and we want it to be very
17 comprehensive so we can be assured we are not missing
18 something out there.

19 Q. Okay, thank you. That clarifies my
20 concern about that matter. Perhaps I can ask you to
21 turn to the witness statement, page 429.

22 Now, on this page, Dr. Euler, in
23 paragraph 3.2 entitled: Provincial Wildlife Population
24 Monitoring, we see a brief discussion of the provincial
25 wildlife monitoring program and then on to page 430,

1 the top paragraph, there is an indication that:

2 "The Ministry also recognizes that while
3 most wildlife species will benefit from
4 the way in which timber management will
5 be carried out in Ontario, there is no
6 overall program to assess the population
7 status of wildlife within the area of the
8 undertaking."

9 And with respect to the first portion of
10 that sentence would you agree with me, Dr. Euler, that
11 this statement is premature until we do know the
12 results of the effectiveness monitoring program?

13 A. Where it says: "The Ministry also
14 recognizes that while most wildlife species will
15 benefit...", is that the phrase you are referring to?

16 Q. That's correct?

17 A. Now, we worked on clarifying that in
18 our lead evidence.

19 Q. Well, as I recall your lead evidence,
20 Dr. Euler, you indicated that there may have been a
21 problem using the word 'benefit'. Perhaps it might
22 have been advisable to use the word either 'benefit' or
23 'neutral'?

24 A. Yeah.

25 Q. My question still stands: Isn't that

1 statement premature until we have the results of the
2 effectiveness monitoring program?

3 A. Well, no, I don't think so. I
4 think -- you see, while we are talking about most here
5 we mean 70 per cent, we use the word most and people
6 ask us to put a number on it, so we did. And I think
7 that the literature, the scientific literature,
8 research that is already done will support that
9 statement.

10 Q. Did the Ministry conduct any special
11 studies of its own to demonstrate or support that
12 statement?

13 A. No, we have not as of yet. That is
14 in the process of -- we're beginning that process.

15 Q. If I could direct your attention to
16 the third paragraph on page 430, there is an indication
17 that:

18 "The wildlife population monitoring
19 program would not correlate changes in
20 the status of species to habitat changes
21 rather it would document transient
22 species abundance. Declining trends
23 would indicate the need for further study
24 to assess which mortality factors
25 including availability of habitat may be

1 responsible for the decline."

2 Does this mean, Dr. Euler, that only if a
3 declining trend is detected will further mortality
4 studies be undertaken?

5 A. Well, I wouldn't want to be quite so
6 categorical. In most cases, if the population is not
7 declining, we probably would not initiate more studies,
8 that's right, because we would feel that it was -- that
9 things were going well. And with our limited
10 resources, we would want to concentrate on problem
11 areas. So if there is no problem, we would probably
12 not put a lot of money into that area.

13 Q. Even if you concentrate on the
14 species of concern, Dr. Euler, would you agree with me
15 that it may take a considerable period of time perhaps
16 years or even decades to identify a decline in
17 population that goes beyond normal fluctuations?

18 A. It can, yes.

19 Q. Would you also agree that by the time
20 a declining population trend is detected and by the
21 time that the monitoring or the mortality studies have
22 been completed, that may be in fact too late to take
23 corrective action?

24 A. No, I don't think -- I think that's a
25 very rare case. I think you know soon enough in most

1 cases in time to take corrective action.

2 Q. Well, perhaps then we can refer to
3 the red-shouldered hawk example that we've heard
4 throughout this hearing.

5 Now, with respect to species like the
6 red-shouldered hawk -- or concentrating solely on the
7 red-shouldered hawk, would you agree with me that there
8 are concerns in the literature that the red-shouldered
9 hawk is in trouble due to habitat loss from timber
10 management activities?

11 A. Well, I wouldn't put it quite so
12 baldly, because it does lead to, I think, an incorrect
13 interpretation. You see, red-shouldered hawk have
14 declined because most of their habitat in southern
15 Ontario has been destroyed and it's been destroyed
16 because of we need land to have farms on them, we have
17 changed the entire character of southern Ontario. That
18 is the main range of red-shouldered hawk. And so, yes,
19 in a sense it's declined because of habitat destruction
20 and, in a sense, it's declined because of timber
21 management because all the trees were cut down.

22 Now, whether timber management in
23 Algonquin Region where red-shouldered hawks also exist
24 is causing those hawks to decline is a question that we
25 don't have the answer yet. There is evidence on both

1 sides of this. Some of our evidence would suggest that
2 now that that initial decline has occurred, it may not
3 be going down any further; other evidence would suggest
4 that it is, but the evidence in the red-shouldered hawk
5 case is difficult in the sense that it doesn't point
6 clearly to current timber management as a causative
7 factor in the decline.

8 Now, that doesn't mean that -- we just
9 don't know for sure, and that is why we are very
10 concerned about that hawk and why we are initiating
11 programs to deal with that.

12 Q. Well, presumably then, Dr. Euler,
13 that is precisely why the Ministry has proposed to
14 develop a monitoring protocol for the red-shouldered
15 hawk?

16 A. Yes, indeed, indeed.

17 Q. What specific findings or triggers in
18 this monitoring program will cause the Ministry to take
19 corrective, mitigative or preventive action with
20 respect to timber management activities?

21 A. What specific findings?

22 Q. Findings, what specific findings in
23 the monitoring program will cause the Ministry to
24 implement corrective action of some kind?

25 A. Well, almost anything that suggests

1 that timber harvesting might be a problem would cause
2 us to start taking action.

3 See, we are taking action right now.
4 Even though we don't know that that is a problem, we
5 are taking action right now; we are doing a monitoring
6 program, we have timber management guidelines for
7 red-shouldered hawk habitat that are out there right
8 now that we are implementing even before we are sure
9 that timber management has been the cause of the
10 decline.

11 So almost any expression of a decline is
12 enough to trigger action, just from the sense of being
13 conservative. See, what if they are right, what if the
14 critics are right and it is timber management that is
15 causing it, we need to take some action right away; and
16 if it turns out later that they were wrong, well, that
17 is better than not taking any action and having a
18 problem.

19 Q. I wouldn't disagree with you there,
20 Dr. Euler. We will return to the red-shouldered
21 monitoring protocol in a few moments.

22 But leaving aside the example of the
23 red-shouldered hawk, would you agree with me that it
24 would be preferable to undertake population monitoring
25 and studies of habitat needs of various species more or

1 less at the same time so that corrective action can be
2 implemented quickly if necessary?

3 A. Oh, yes. Yes, indeed, and that is
4 what we are doing.

5 Q. Are you doing that for species other
6 than the red-shouldered hawk?

7 A. Oh, yes.

8 Q. And which species would those be?

9 A. Well, I know it may seem a little bit
10 confusing, but let me try to talk about the three major
11 activities that we are doing. One is population
12 monitoring, one is habitat inventory and one is
13 effects/effectiveness monitoring.

14 Now, all three of those activities are
15 underway concurrently and they will be -- there will be
16 lots of interchange between all three of those
17 programs. So I think we are doing what you're
18 suggesting we should do, at least to the best of my
19 understanding we are.

20 Q. I think my question, Dr. Euler, was:
21 Can you identify these other rare species for which
22 population monitoring and habitat needs studies are
23 being conducted?

24 A. Well, in the update we gave some
25 specific examples, like we talked about the fact that

1 we are doing small mammal trapping in Algonquin Park
2 and that just -- hopefully just a solid baseline of
3 data to keep, and we are working on Cooper's hawk for
4 example, and there are a number of other species that
5 we are going to work on that we haven't yet identified.

6 So it's very hard for me to answer your
7 question directly with a list of species. We would
8 hope to talk with stakeholder groups and get a great
9 deal of information from them about what we should
10 monitor and, at the same time, there are a number of
11 monitoring activities that are going on; for example,
12 we monitor a number of hawks at Grimsby and I talked
13 about some of that in my evidence in Panel 10.

14 We are monitoring a number of bird
15 species at Long Point, and you recall I talked about
16 that, where Long Point acts as a funnel. We are doing
17 a small mammal trapping, we have trapping records from
18 furbearing animals that help us keep track of what is
19 happening.

20 So there is really quite a few things
21 going on and what we hope to do in the next phase is
22 bring that together and put a little more organization
23 to the program.

24 Q. You have referred to the wildlife
25 habitat inventory and the population monitoring update

1 which is Exhibit 923, perhaps we should address that
2 document right now. As well, it would be advisable to
3 still have the terms and conditions before you, Dr.
4 Euler.

5 MR. MARTEL: What ...?

6 MR. LINDGREN: It's exhibit 923, Mr.
7 Martel. Mr. Chairman, I have located an additional
8 copy.

9 THE CHAIRMAN: It's okay, I have found
10 it. I also found my regulation. You can have this
11 back. (handed)

12 MR. LINDGREN: Thank you.

13 Q. Dr. Euler, perhaps we can start by
14 referring again to term and condition No. 45?

15 DR. EULER: A. Yes.

16 Q. Perhaps you can advise me what the
17 Ministry means by the term 'wildlife'; does this
18 include plants?

19 A. It could include plants under certain
20 circumstances, yes.

21 Q. And then turning to paragraph (c) of
22 that term and condition, there is a reference to
23 wildlife species of local concern. And again you have
24 indicated this could be plants or plant species?

25 A. Yes.

1 Q. Would it be possible to -- well,
2 first of all, what are wildlife species of local
3 concern?

4 A. Well, potentially anything that is a
5 problem in a local area.

6 Q. A local area being what?

7 A. Well, we have not specifically
8 identified that to allow some robustness in the way
9 that that is dealt with. Often it would be a timber
10 management plan area; it could be some other area, it
11 could be a very, very small area. We have in southern
12 Ontario some endangered plants that occupy an area as
13 small as a hundred metres by a hundred metres. So that
14 could occur.

15 Q. I take it then, Dr. Euler, it's not
16 possible to identify in this term and condition all the
17 possible species that could be wildlife species of
18 local concern?

19 A. Yeah, that's correct.

20 Q. If that's the case then, Dr. Euler,
21 wouldn't it be advisable to provide that kind of
22 direction in the term and condition.

23 A. What kind of direction?

24 Q. The direction that the wildlife
25 species could be (a) plants, (b) they could occur in a

1 management unit or in a hundred metre by hundred metre
2 location. Is that kind of direction expressly laid out
3 elsewhere in a Ministry document?

4 A. No, I don't think so. I don't think
5 so.

6 Q. In your opinion, would it be
7 advisable to document that to assist resource managers
8 in identifying wildlife species of local concern?

9 A. I would have no objection to that.
10 I'm not sure that it's needed, but I would have no
11 objection. That is what we will be doing, but whether
12 you really need to do it is, I think, a moot point.

13 THE CHAIRMAN: Surely, Mr. Lindgren,
14 there can be a whole series of things that wildlife
15 managers would normally take into account in the
16 exercise of their duties, would be parts of training
17 programs, et cetera, that won't find their way with
18 that degree of specificity in conditions of approval.

19 MR. LINDGREN: Our concern, Mr. Chairman,
20 is that the phrase 'wildlife species of local concern'
21 is a bit vague, a bit ambiguous and certainly open to a
22 variety of interpretations and we were wondering if it
23 would be advisable to pin that down somehow, either in
24 this document or elsewhere in a Ministry policy,
25 bulletin or directive. And I think Dr. Euler indicated

1 he would have no objection to doing that.

2 Q. Moving on to term and condition 57,
3 again this is another term and condition that you
4 referred to earlier, Dr. Euler?

5 DR. EULER: A. Yes.

6 Q. The first sentence of term and
7 condition 37 reads that:

8 "The MNR shall develop and implement a
9 provincial wildlife population monitoring
10 program within the area of the timber
11 management undertaking."

12 Dr. Euler, does this mean that the
13 proposed monitoring program is strictly limited to
14 species that occur within the area of the undertaking?

15 A. I'm hesitating because we have
16 discussed this at some length and I think we have to
17 say that virtually all of the species in this program
18 will be within the area of the undertaking; however,
19 there are probably circumstances out there somehow,
20 somewhere that we may monitor a species that is not
21 involved in the area of the undertaking.

22 Q. Would you agree with me, Dr. Euler,
23 that if the province as a whole is monitored, is it
24 less likely that you will miss a species that occurs in
25 the area of the undertaking?

1 A. Yes, indeed.

2 Q. Would you also agree that if this
3 monitoring program occurs on a provincial basis that it
4 is likely that you may identify some practical means of
5 monitoring the species that occur within the area of
6 the undertaking?

7 A. Some practical means. I don't know
8 what that means.

9 Q. It seems to me that there is some
10 uncertainty as to how to measure or monitor the
11 populations of certain rare species, for example, and
12 that is under current discussion, as I understand it.
13 If the populations of all or most species within the
14 province are monitored, that monitoring process itself
15 may be a learning process and it may in fact identify
16 some ways of monitoring specific rare species or
17 species of local concern.

18 A. Oh, yes. Mm-hmm, yes. In other
19 words, it's a learning process and, yes, that's right,
20 it is.

21 Q. Now, returning to term and condition
22 57, in paragraph (a) there is a -- well, actually just
23 above that in the second sentence of the introductory
24 paragraph there is an indication that:

25 "This program will monitor population

1 Trends of representative terrestrial
2 vertebrate species."

3 Now, here I would like to refer to the
4 package of interrogatories that we filed which is
5 Exhibit 942.

6 MR. LINDGREN: I am sorry, Mr. Chairman,
7 the interrogatory I'm referring to is in Exhibit 928A.
8 Oh, I'm sorry, I do have it wrong. It was 942, Mr.
9 Chairman.

10 Q. Dr. Euler, can I ask you, if you have
11 that exhibit, to turn to question No. 13. And very
12 briefly, we asked the Ministry to identify each species
13 for which the population monitoring will be carried
14 out. And the answer to question (a) indicates that:

15 "The selection of species for a
16 provincial wildlife population monitoring
17 is currently under review and has not yet
18 been determined."

19 I take it that that is still the case,
20 Dr. Euler?

21 DR. EULER: A. Yes, it is.

22 Q. When can we expect that these species
23 will be selected?

24 A. My best estimate would be some time
25 in around the middle of 1990 to the end of 1990. Some

1 time during the year 1990.

2 THE CHAIRMAN: We will still be with you,
3 Mr. Lindgren.

4 MR. LINDGREN: Well, hopefully my
5 cross-examination will be finished by that time.

6 THE CHAIRMAN: Hopefully. Can we find a
7 convenient time for a break?

8 MR. LINDGREN: One further question, then
9 perhaps it would be appropriate for a break.

10 Q. In paragraph (b) of term and
11 condition 57, as examples of representative terrestrial
12 vertebrates the Ministry indicates that it will be
13 looking at:

14 "species which utilize the following
15 habitat types and features: snags,
16 dead and downed woody material, riparian
17 areas, mature/overmature stands, and
18 large areas in a similar successional
19 stage."

20 In your professional opinion, Dr. Euler,
21 what are some of the candidate species for each of
22 those habitat types?

23 A. Pileated woodpecker, northern
24 three-toed woodpecker.

25 Q. Is this for snags?

1 A. Yes. Red-backed salamander for the
2 dead and downed woody material; riparian areas, hooded
3 mergansers; mature/overmature stands, ovenbirds;
4 and perhaps Tennessee warblers for similar successional
5 or early successional stages. Those are candidates.

6 Q. Is the Ministry actually proposing or
7 contemplating that these species be monitored?

8 A. No, those are candidates. We will
9 review them, we will review whether they are
10 appropriate. It's a big job to review and pick the
11 best candidate species and we don't want to do that
12 precipitously, so we are going to move in a measured
13 thoughtful way to pick the species.

14 MR. LINDGREN: This would be an
15 appropriate time for a break, Mr. Chairman.

16 THE CHAIRMAN: Okay. We will take 20
17 minutes.

18 Thank you.

19 ---Recess taken at 10:00 a.m.

20 ---On resuming at 10:30 a.m.

21 THE CHAIRMAN: Thank you. Be seated,
22 please.

23 MR. LINDGREN: Q. Dr. Euler, at the
24 break we were looking at Exhibit 923 which is the
25 wildlife population monitoring update. I would ask you

1 to turn to page 3 of that exhibit, and in the last full
2 paragraph, which is subtitled: Bird Migration
3 Monitoring, there is a reference to a neotropical bird
4 study that is to occur in 1990. I take it that you are
5 familiar with that study, Dr. Euler?

6 DR. EULER: A. In a general way, perhaps
7 not in every detail.

8 Q. Well, having regard to the time frame
9 that I have just referred to, does this mean that it is
10 only a one-year study?

11 A. No, no. This is just an update of
12 what is happening in the physical year that we are
13 currently in, and this study may well continue in 1991
14 and beyond.

15 Q. Okay, thank you. I wasn't clear on
16 that?

17 A. Yeah.

18 Q. The paragraph goes on to indicate
19 that:

20 "The project will analyse 28 years of
21 migration data from the Long Point Bird
22 Observatory to determine which species
23 can be monitored with migration data."

24 I take it then this project is not
25 intended to monitor or gather new information on

1 neotropicals, it's just simply an analysis of existing
2 data?

3 A. That's right. It's so valuable
4 though with 28 years of data, that's extremely valuable
5 data.

6 Q. That's correct. Turning to page 4,
7 Dr. Euler, in the first full paragraph there is a
8 reference to the bird abundance and species diversity
9 and forest ecosystem classification program. Again,
10 can I ask you if this is a one-year project or is this
11 an ongoing project?

12 A. We haven't really decided yet. It
13 may continue, depending on the results of this study.
14 It certainly is not decided that it will stop at the
15 end of this year.

16 Q. The next paragraph, last sentence,
17 there is an indication that this project will provide a
18 sound basis for monitoring most bird species included
19 in Table 2, page 445, Panel 16.

20 Now, I have that table before me. I'm
21 not sure if it's necessary for you to turn to it, but
22 this table, as you may know, does include specific
23 species of birds.

24 A. Yes.

25 Q. Such as bald eagles, golden eagles,

1 peregrine falcons, red-shouldered hawk, Cooper's hawk
2 and great gray owl. And, as well, at the end of this
3 table there are unnamed area-sensitive species and
4 cavity nesters.

5 Now, do I take this as a commitment by
6 the Ministry to monitor all of these species at the
7 provincial and/or local level?

8 A. I would like to turn to that table,
9 if I may

10 Q. Okay, fine. That is page 445 of the
11 witness statement.

12 A. Okay. And now, I'm sorry, I'm going
13 to have to ask you to repeat the question.

14 Q. Well, as I've gone through the list
15 of the bird species that were monitored, there is an
16 indication that the Ministry will implement a
17 provincial population monitoring program. Now, is that
18 in fact the case?

19 A. Yes.

20 Q. When can we expect to see these
21 monitoring programs in place for each of the species?

22 A. Well, we have started the process
23 right now. The first step in the process is to pick
24 the species and we are starting that process right now.

25 We are cooperating with agencies such as

1 the federal government, for example, to do this right
2 now. So, in one sense, we have started that right now,
3 and this past year we had people in the field counting
4 birds and we are going to continue with that.

5 Q. When you say counting birds, are you
6 referring to the birds that are referred to in Table 2?

7 A. Well, some of them, not all of them.

8 Q. Just to clarify your evidence Dr.
9 Euler. Are you saying that some of the provincial
10 monitoring programs are in place for these birds; while
11 other monitoring programs are not yet in place for the
12 species listed on Table 2.

13 A. Well, I'm just trying to think how
14 best clearly to indicate it. You see, the monitoring
15 program has been initiated, okay, that is clearly
16 started, we have had certain activities ongoing this
17 year. The monitoring program is not complete, we will
18 add other species to it.

19 And in the Table 2 we do not yet have a
20 monitoring program for golden eagle, for example, and
21 that is because there are very, very few in the
22 province and you just -- the need for that monitoring
23 program isn't as compelling as are other species on the
24 list. In due course, at a measured rate, we will deal
25 with that.

1 Cooper's hawk and red-shouldered hawk, on
2 the other hand, are very important and we have started
3 that process already with people actually in the field
4 making measurements.

5 Q. You have indicated that those
6 programs have commenced. Can you give us some rough
7 indication as to how long those studies are expected to
8 last and when we can start to see or expect results
9 from those monitoring programs to determine if further
10 corrective action may be required?

11 A. Well, we have included some results
12 in the update. For example, there is a status report
13 of the Cooper's hawk, red-shouldered hawk matter and
14 that is before you right now. We would anticipate
15 working closely with those committees. You recall the
16 committee structure, the stakeholder committees will be
17 apprised of all of our activities through that
18 structure that Mr. Gordon had on the board, so there
19 will be regular stakeholder committee meetings.

20 One of the things you do at each meeting
21 is update everyone on what had happened since the last
22 meeting. I would say then it's an ongoing process of
23 letting everyone who needs to know know.

24 Q. Thank you. Now that some of those
25 studies are underway for the particular species, are

1 you able to provide us with a rough indication as to
2 how much money has been committed to these studies and
3 how much monitoring will be necessary to carry them out
4 to their conclusion or their completion?

5 A. Yes, and that was -- the counter of
6 the money allocated is in the evidence that we gave in
7 that table. So it's the new funding estimates and you
8 will see there what has been committed to each of the
9 various categories.

10 Q. I take it that you are referring to
11 Exhibit 936?

12 A. Yes. So under estimated annual cost
13 of full implementation under wildlife population
14 monitoring is 300,000 a year.

15 Q. That is not broken down further into
16 particular studies, that is the global figure?

17 A. That is the total, yes, and that's in
18 addition to whatever may be spent by the Ministry
19 before these monies were allocated. So, for example,
20 we monitor moose regularly and that money is not here.
21 This is in addition to our current program.

22 Q. I think earlier this morning you have
23 indicated that the overall budget of the Wildlife
24 Branch is in the range of \$10-million. Not that I want
25 to pin you down to it, but that's the --

1 A. Okay. Yes, that is what I said, and I
2 qualified as saying it's been a while since I looked at
3 it. So you must remember that.

4 Q. Can you give us any indication as to
5 the approximate breakdown of funds in terms of game and
6 non-game species?

7 A. I just couldn't do that.

8 Q. Would it be in the range of 80 per
9 cent for game, 20 per cent for non-game?

10 A. It would be high. I don't know. I
11 just won't get committed to a figure, because I really
12 can't. But it's clearly -- it's clearly more for game
13 than non-game, if that's helpful.

14 MS. MURPHY: Might I just remind my
15 friend that - I can't put my hands on it right now -
16 but there was an interrogatory with respect to this
17 matter way back in Panel 1 and it may be wise to go
18 back and have a look at that. I think it's directly on
19 the point.

20 THE CHAIRMAN: Thank you.

21 MR. LINDGREN: The reason why I'm asking
22 that question, Mr. Chairman, is that it's conceivable
23 that the funding situation may have changed since Panel
24 1 which is, you know, 18 months ago, and that is the
25 purpose of asking the question today to determine

1 whether or not that breakdown is still the same or
2 whether it has become different in some manner.

3 Q. Now, returning to Exhibit 923, Dr.
4 Euler, the bird abundance and species diversity and FEC
5 program obviously will be looking at the FEC system or
6 process. Can you confirm for me that the FEC to this
7 point has only been completed for the northcentral and
8 northwestern regions?

9 DR. EULER: A. That's my understanding.

10 Q. Are you in a position to indicate
11 when we can expect an FEC for the other regions?

12 A. No, I'm not. Perhaps someone else on
13 the panel could, but I can't.

14 Q. Mr. Cary?

15 MR. CARY: A. I am sorry, you will have
16 to repeat your question.

17 Q. The question is: When can we expect
18 an FEC for regions other than the northcentral and
19 northwestern regions?

20 A. What can we expect...?

21 Q. When can we expect to see an FEC
22 system in place?

23 A. I can't answer that question, I'm
24 sorry.

25 Q. Would you agree with me then, Dr.

1 Euler, that until the FEC system is in place for the
2 other regions, the results of this study are extremely
3 limited; i.e., they are only going to be applicable in
4 the northcentral and northwestern regions?

5 A. Oh, yeah, but I wouldn't say that was
6 extremely limited, those are big areas.

7 Q. That's correct, but there are other
8 regions?

9 A. Oh of course, yes, and they are
10 working away at their FECs.

11 MR. LINDGREN: If I could have a moment,
12 Mr. Chairman.

13 MS. MURPHY: Mr. Chairman, the issue of
14 the FEC and where it's done and so forth, my
15 recollection is that there was evidence in Panel 7 and
16 I believe also in Panel 10.

17 And what I would like to do is undertake
18 to find that for you, because I think that has been
19 spoken to and at very least, my recognition is that the
20 FEC for northwestern region doesn't mean northwestern
21 region using the regional bounds of the Ministry
22 either. So I think that should be clarified, and we
23 will have to go back and see whether or not --.

24 MR. LINDGREN: Mr. Chairman, I would
25 suggest that kind of clarification could occur during

1 re-examination.

2 Q. Dr. Euler, can I ask you to turn to
3 the next paragraph on page 4 where there is a reference
4 to the bird species diversity and abundance with age of
5 white pine study that is currently being carried out in
6 Temagami.

7 There is an indication that the results
8 will be available later this winter; that is, the
9 winter of 1990. This is in the last line of the second
10 paragraph. Can you confirm for me, Dr. Euler, that
11 this study personnel here did not conduct any night
12 surveys?

13 DR. EULER: A. Well, I couldn't confirm
14 that for you, no, not just now.

15 Q. Will you undertake to make the
16 necessary enquiries?

17 A. Yes.

18 Q. Will you also undertake to obtain and
19 provide a copy of the study design?

20 MS. MURPHY: Can my friend explain what
21 the term means. I mean, it's their definition, I'm not
22 certain.

23 MR. LINDGREN: Q. Dr. Euler, do you
24 understand what I'm referring to when I say a study
25 design?

1 MS. MURPHY: I am sorry, I understood my
2 friend to be asking about a night survey.

3 MR. LINDGREN: Oh, a night survey.

4 Q. A survey of nocturnal species such as
5 owls.

6 DR. EULER: A. Owls, yes. Yes, we can
7 undertake to -- I can undertake to find that out.

8 Q. Now, assuming that no night surveys
9 were conducted, Dr. Euler, would you agree with me that
10 nocturnal species such as the boreal owl may be under
11 represented in the survey results?

12 A. Certainly possible, that's right.

13 Q. Turning to page 5, Dr. Euler. In the
14 second full paragraph there's a reference to the small
15 mammal monitoring program in Algonquin Park, and you
16 have indicated this has been a very valuable study
17 because of the continuity of the study.

18 Can you indicate to us if and when we can
19 expect a similar study elsewhere in the province?

20 A. Well, no, I can't give you specifics.
21 I would certainly anticipate that some other studies of
22 this nature would occur. I can't be specific about
23 when or where because we need to do that in the context
24 of a population strategy -- monitoring strategy. We
25 want to build a whole strategy with carefully measured

1 and thoughtful activities within the strategy.

2 Q. Won't the results of wide-spread
3 small mammal monitoring help formulate or shape that
4 strategy as opposed to having the strategy design the
5 monitoring program?

6 A. Well, I don't think so. I would
7 rather do a strategy first. We need to talk with
8 Professor Ron Brooks, for example, and say: What in
9 your opinion, where in your opinion should we do this
10 as well as Algonquin Park. And I'm sure he can be very
11 helpful in helping us decide where else to do it.

12 Q. And is the Ministry intending to ask
13 that very question of Dr. Brooks?

14 A. We certainly are prepared to ask that
15 question and probably of Dr. Brooks, yes.

16 Q. Thank you.

17 A. And as well as some others. See, we
18 would like to get a lot of input into this question and
19 he's clearly one of the persons we would contact.

20 Q. Further down on page 5 we see
21 reference to the monitoring program for red-shouldered
22 hawk. We spent a little bit of time on this earlier
23 this morning, Dr. Euler. I would like to revisit it
24 briefly.

25 Can I ask you this: If the monitoring

1 protocol or monitoring program confirms the population
2 decline in the species, is it the Ministry's intention
3 to take corrective action and prevent a future decline;
4 i.e., put the red-shouldered hawk guidelines into
5 effect?

6 A. Oh yes.

7 Q. Are you aware of any proposed or
8 actual changes to the 1984 habitat management
9 guidelines for Ontario's forest nesting accipiters,
10 buteos and eagles?

11 A. It's kind of tough to pronounce.

12 Q. It is. Are you aware of any changes
13 to that guideline that were designed to protect
14 red-shouldered hawk habitat?

15 A. Yes, I am.

16 MR. LINDGREN: Mr. Chairman, I would like
17 to introduce as the next exhibit a memo dated June 8th,
18 1989 to the Regional Director of the Algonquin and
19 Eastern Regions from R. M. Christie, Executive Director
20 of the Wildlife Branch.

21 MR. HUFF: (handed)

22 THE CHAIRMAN: Exhibit 946.

23 ---EXHIBIT NO. 946: Memo from R. M. Christie,
24 Executive Director, Wildlife
25 Branch to Regional Director,
Algonquin and Eastern Regions,
dated June 8, 1989.

1
2 MR. LINDGREN: Q. Dr. Euler, I take it
3 that you are familiar with this document. You are
4 listed as a contact person in the very final paragraph
5 of page 3.

6 DR. EULER: A. Yes, I am.

7 Q. Can you advise me what the status of
8 this memo is; is it a policy or directive or bulletin?
9 It's certainly not a guideline; is it?

10 A. Well, probably the best word to
11 describe it is, it's a resource manual in the sense
12 that we used that term in earlier evidence. It would
13 be most properly described as a resource manual.

14 Q. Is it currently in force, Dr. Euler?

15 A. What would be --

16 Q. Is it in effect now, are the persons
17 subject to its directions in fact bound by this memo?

18 A. See, again I hesitate, trying to
19 think about how best to answer your question.

20 Q. It's not a draft; is it, Dr. Euler,
21 or is it?

22 A. No. No, it's not a draft memo, no,
23 and it's -- you see, we have provincially approved
24 guidelines, okay, and that is something that everyone
25 has to have regard to in making timber management

1 plans. This is not a provincially approved guideline,
2 okay. It's most analogous to a resource manual which
3 is a piece of information that we would -- that we want
4 our field staff to use in making plans.

5 Now, there is nobody out there with a big
6 club that is going to beat them over the head if they
7 don't use it; on the other hand, all of our managers
8 who are involved in the timber management planning
9 process are very cognizant of the red-shouldered hawk
10 issue and they are most anxious to use whatever
11 information we can supply to them.

12 So this represents our best summary of
13 what they should do in timber management planning to
14 deal with the red-shouldered hawk issue.

15 Q. But did I understand you to say that
16 it's not mandatory to have regard to these
17 recommendations?

18 A. That's right. In a formal sense,
19 that is correct, there is no statutory requirement, for
20 example, that they use it.

21 Q. So, for example, a resource manager
22 may be free to disregard the recommendations that are
23 set out here?

24 A. Well, he disregards it at his peril I
25 assure you.

1 Q. What peril is that, Dr. Euler?

2 A. Well, a peril of not doing a good
3 job, of not dealing with the issue that is clearly in
4 the public mind, of being accused of ignoring an
5 extremely important problem.

6 The regional director in this region, for
7 example, has identified this as an extremely important
8 problem and he wants all his staff to take careful
9 notice of this problem.

10 THE CHAIRMAN: Well, let's try and short
11 circuit where I think the questioning is going. Any
12 objections to this being made mandatory?

13 DR. EULER: Well, yes.

14 THE CHAIRMAN: Okay. Let's find out why.

15 DR. EULER: We are not sure at this point
16 in time of the technical backing of this and we would
17 like to be sure of the technical nature of this before
18 we make it mandatory.

19 See, we are suffering here from a lack of
20 technical knowledge. One of the things that we talk in
21 here is, we talk about how:

22 "A no-cut primary buffer zone
23 encompassing ten hectares and extending
24 at least 150 metres from the nest tree
25 should be marked around each active

1 nest."

2 Well, we just don't have research data to
3 ensure that 150 metres is the absolute right number.
4 We believe it is based on what we know, but until we
5 have some more research evidence to give us more
6 assurance, I wouldn't recommend making this mandatory.

7 THE CHAIRMAN: Well, why not make it
8 mandatory to the extent that it covers what it covers.
9 If you find out through further data that there should
10 be some changes you amend it; as opposed to taking the
11 position you expect all your managers to follow it, you
12 expect all your field people to follow it, if they
13 don't follow it, nothing happens other than the fact
14 that they may not do a good job, but yet you expect
15 them to take heed of the best information you have at
16 the present time which is summarized in this memo.

17 So, I mean, can you have it both ways?

18 DR. EULER: Well, I don't know if you can
19 have it both ways or not. See, what we try to do is
20 move from a position of uncertainty, as best we can, to
21 a position of certainty and, in this case, we are
22 moving in that direction, but I'm not --

23 THE CHAIRMAN: Okay. But aren't you
24 saying effectively that on the move from uncertainty to
25 certainty, here's where we are at this point in time?

1 DR. EULER: Yes, yes.

2 THE CHAIRMAN: And we expect everybody
3 out there to at least be up to this level at this point
4 in time. If we find out that we are wrong and it
5 should be 75 metres instead of 150, we will change it
6 as soon as we hear about it.

7 This provides a minimum degree of
8 adherence to policy that you feel can be supported at
9 this point in time. That's all it means.

10 DR. EULER: Well, yeah, It's our best
11 knowledge at this point in time, but the degree of
12 uncertainty associated with it, to be honest, is
13 relatively high.

14 MRS. KOVEN: You haven't said that it's
15 your minimum level.

16 DR. EULER: No.

17 MRS. KOVEN: In fact, it could exceed
18 many times the amount of standing timber that you would
19 need for protection.

20 DR. EULER: Well, that's right.

21 MRS. KOVEN: And I think the Chairman is
22 suggesting that there is no cost to simply reserving
23 that much wood, leaving that much timber uncut.

24 Do you see it that way; do you see it
25 that there's essentially no cost to leaving 10 hectares

1 of timber around every red-shouldered hawk's nest in
2 the province?

3 MR. CASSIDY: I am sorry to interrupt,
4 Mrs. Koven. That is exactly what I was cross-examining
5 on yesterday. Whatever this witness says is fine but,
6 I mean, you haven't had evidence about that. So I just
7 caution you in that respect.

8 MRS. KOVEN: I'm saying I don't think
9 that's what Dr. Euler said. I wanted him to clarify
10 what he meant by that.

11 DR. EULER: I'm sorry, I'm really
12 confused.

13 MRS. KOVEN: I'm confusing you. The
14 Chairman has suggested that why don't you simply make
15 these mandatory, leave 10 hectares or 150 metres of
16 timber standing around every red-shouldered hawk's nest
17 you see, in that sense, in terms of policy, it would be
18 a very safe, conservative course of action to take, but
19 that suggests that there is no cost to doing that.

20 DR. EULER: Oh yes.

21 MRS. KOVEN: And do you agree with that?

22 DR. EULER: Yes. Well, wait a minute
23 now.

24 MRS. KOVEN: I don't think you do. I
25 think what you are trying to say is, is that in a

1 policy sense that makes very good sense for wildlife
2 concerns, but there is a cost on the other hand to the
3 timber industry or the use of that timber if you make
4 this situation mandatory now without having better
5 knowledge.

6 DR. EULER: Yes, that's right. That's
7 right.

8 THE CHAIRMAN: But I guess my point is,
9 then why hold this up as something that people in the
10 field are expected to follow. That's my argument.

11 My argument is: If you want to evaluate
12 it on an ad hoc basis, manager by manager out there as
13 to what they think is appropriate in a given situation,
14 then fine, they can do that, but that would not be
15 sending this out as sort of a manual and saying we
16 expect you to take this into account.

17 DR. EULER: Mm-hmm. You will have to
18 forgive me, Mr. Chairman, do you want me to comment on
19 that?

20 THE CHAIRMAN: Well, no. What I'm saying
21 is, is that I'm having some difficulty with you holding
22 this up as a document in the field that managers are
23 expected to follow.

24 DR. EULER: Okay.

25 THE CHAIRMAN: I think you have stated

1 that clearly.

2 DR. EULER: Yeah.

3 THE CHAIRMAN: Including all of its
4 provisions.

5 DR. EULER: Okay.

6 THE CHAIRMAN: Is that your position?

7 MS. MURPHY: Well, Mr. Chairman, just to
8 set the record straight, Dr. Euler, didn't hold the
9 document up at all. You know, it was put to him and he
10 was asked how this was used and he has explained.

11 THE CHAIRMAN: All right. But he's aware
12 of the document and he's indicated to us how it's being
13 using.

14 DR. EULER: Yes.

15 MS. MURPHY: That's right. That is what
16 he was asked and that's what he answered.

17 THE CHAIRMAN: Okay. And you have
18 indicated that this is to be treated by those in the
19 field as a resource manual.

20 DR. EULER: Right.

21 THE CHAIRMAN: Is that not the way you
22 characterized it?

23 DR. EULER: A summary of the best
24 knowledge available.

25 THE CHAIRMAN: And you expect managers

1 out there to take what this memo says into account when
2 managing for wildlife?

3 DR. EULER: That's right.

4 THE CHAIRMAN: Okay.

5 DR. EULER: Read it carefully, and...

6 THE CHAIRMAN: Now, you are also saying
7 that if they want to deviate from it in their own
8 circumstances because they don't happen to believe in,
9 for instance, the buffer zone that it refers to, they
10 can do that. Is that what you are saying?

11 DR. EULER: Yes. We have no formal
12 procedure that says they may not deviate from it,
13 that's correct.

14 THE CHAIRMAN: But you are also saying,
15 in your opinion, if they did that they may be guilty of
16 not being good managers?

17 DR. EULER: That's right.

18 THE CHAIRMAN: You feel personally that
19 they should be following this. Is that what you are
20 saying?

21 MR. EULER: Oh yes, sir, I do. Yes,
22 indeed.

23 MR. MARTEL: Why give them the option
24 then? Why give them the option then, I mean, until you
25 are sure? I mean, it's a flip-a-coin sort of

1 situation; heads you win, tails you lose.

2 I mean somebody can follow it and
3 somebody doesn't have to follow it. Surely there
4 should be consistency in the application of what is
5 there.

6 THE CHAIRMAN: That is the difficulty, at
7 least the two of us are having, I don't know about my
8 colleague Mrs. Koven, but that is part of the
9 difficulty.

10 DR. EULER: Well, see, the question then
11 becomes, as a head office unit: At what point do you
12 start putting the big club on the field manager and
13 saying: You must do this.

14 THE CHAIRMAN: At the point that you
15 decide at head office that this is something they
16 should follow or not follow. Supposedly that is the
17 important.

18 DR. EULER: Well, yes, that's right. But
19 then if you look at your very best information and
20 there's a degree of uncertainty about it, it becomes
21 difficult to know at what point to put the club into
22 operation and, in this case, we just haven't done that
23 yet because we have a degree of uncertainty about it
24 that we are not totally comfortable with yet.

25 THE CHAIRMAN: But you are referring to

1 it and characterizing it as your best information.

2 DR. EULER: Well that's true too.

3 THE CHAIRMAN: Why shouldn't they follow
4 it if that's your best information. If they don't
5 follow, it presumably they have either got better
6 information than you and, therefore, should be
7 following something else.

8 DR. EULER: Well, that's possible.

9 MR. MARTEL: Or until you prove that
10 either it's right or wrong.

11 DR. EULER: Yes. And we have a major --
12 we are putting a lot of monitoring into trying to prove
13 whether it's right or wrong.

14 MR. MARTEL: Well, why don't you protect
15 it until you know it's there, that your information is
16 either accurate or inaccurate. If it's inaccurate, you
17 throw it out; if it's accurate you have protected the
18 red-shouldered hawk during the interim until you come
19 to a final decision.

20 DR. EULER: Well, because you are always
21 trying to skate between the cost of the industry and is
22 it fair to impose a cost on the industry when you can't
23 show with hard data that it's going to have a benefit.

24 THE CHAIRMAN: Is it fair to tell your
25 managers out there: This is the best information we

1 have, if you don't want to follow it, don't?

2 DR. EULER: See, I don't think it comes
3 off quite that baldly, Mr. Chairman. I mean, for a
4 manager to say: Oh well, tough. There's a memo, I'm
5 not going to follow. It doesn't work that way.

6 THE CHAIRMAN: You expect him to follow
7 it?

8 DR. EULER: Well, exactly, and there is a
9 whole --

10 MR. MARTEL: And the costs then are the
11 same as the ones that would be if it were mandatory?

12 DR. EULER: I am sorry?

13 MR. MARTEL: The costs, if they follow
14 it, would be identical to what the costs would be if it
15 were mandatory?

16 DR. EULER: Well, yes, that is true.

17 MR. MARTEL: So, I mean, you have left
18 the poor manager out in the field in a rather tenuous
19 position I would think.

20 DR. EULER: Well...

21 MRS. KOVEN: Aren't you trying to say,
22 Dr. Euler, that in local circumstances there would be
23 some flexibility in interpreting this. I mean, we have
24 heard that argument many, many times.

25 DR. EULER: Well, yes.

1 MRS. KOVEN: But wouldn't there be a
2 situation - I know nothing about the red-shouldered
3 hawk - but in a management unit would there be, let's
4 say, five red-shouldered hawk nests and the forester
5 would be perfectly able to protect four of them very,
6 very well; and for some reason in terms of the size of
7 the cut or the shape or whatever he felt that one of
8 the nests he was simply unable to protect and so he
9 would, to the extent he was able, follow these
10 guidelines but wouldn't be able to completely do so?

11 DR. EULER: Sure.

12 THE CHAIRMAN: But isn't that the case of
13 any mandatory guideline; follow it, normally there's a
14 deviation procedure if you're not going to follow it,
15 and you explain why.

16 DR. EULER: Yes, the processes are
17 similar. It's just there is more weight in the
18 mandatory guideline because we feel we have more
19 research to back it up.

20 THE CHAIRMAN: Okay. I don't know if we
21 are ever going to resolve this particular one at this
22 time, but let's move on to something else.

23 MRS. KOVEN: I would just say one more
24 thing, and I think this is a really good example of a
25 bureaucratic dilemma; and that is, we accuse or we

1 criticize bureacracies for doing nothing and when they
2 do something we are very critical of that if they are
3 simply -- if they are not able to give absolute
4 scientific proof that what they are doing is valid.

5 And I would think that it's not in the
6 interest of the public to push bureaucrats against the
7 wall and prevent them from putting out this sort of
8 documentation, the best information they possibly
9 could, but I think you are going to be criticized
10 either way.

11 DR. EULER: We sure are and it's an
12 everyday experience I tell you.

13 MRS. KOVEN: But I think that's what we
14 are talking about here.

15 DR. EULER: Yes, indeed, that's right.

16 MR. LINDGREN: Well, Mr. Chairman,
17 perhaps --

18 DR. EULER: But we enjoy it, Mr. Martel.

19 MR. LINDGREN: Mr. Chairman, I should
20 indicate at this point that we are not critical of this
21 document, the red-shouldered hawk document, in fact we
22 believe that the Ministry should be commended for this
23 direction. I would like to, however, look at some of
24 the particular provisions in this document and pose a
25 couple of questions to Dr. Euler on that.

1 Q. But before I do that, Dr. Euler, I'm
2 looking at term and condition No. 40. This term and
3 condition provides that:

4 "The approved implementation manuals as
5 amended from time to time shall be used
6 in the planning of timber management
7 activities."

8 And this term and conditions goes on to
9 indicate that:

10 "These implementation manuals include
11 provincial guidelines and
12 construction/operational manuals, the
13 use of which is mandatory in timber
14 management and resource/environmental
15 manuals which are used as required."

16 Now, turning to subparagraph (c) of that
17 term and condition, we see a listing of various
18 resource and environmental manuals. No. 2 is the
19 habitat management for Ontario forest nesting
20 accipiters, buteos and eagles - I hope I got it right
21 that time.

22 DR. EULER: A. You did well.

23 Q. That is the manual or directive that
24 this Exhibit 946 is amending?

25 A. Yes.

1 Q. As I understand it. Yet, I do not
2 see this memo, Exhibit 946, listed under subparagraph
3 (c).

4 My question to you is (a) why not; and,
5 (b) are there other such memos like Exhibit 946 that
6 may pertain not only to the red-shouldered hawk but
7 other species?

8 MS. MURPHY: I would suggest that 'why
9 not' can be answered very simply by looking at the date
10 of the two documents, first of all.

11 MR. LINDGREN: Q. Well, let me respond
12 to that question with a further question. Is it your
13 position, Dr. Euler, that this particular document
14 should be incorporated in the list that we find at
15 subparagraph (c)?

16 DR. EULER: A. Sure, it should be.

17 Q. The other question was: Are there
18 other such directives or memos that may have some
19 bearing on the guidelines that we see listed in term
20 and condition 40?

21 A. Not that I know of. The
22 red-shouldered hawk is such a difficult issue that it
23 has -- see, our choice is to sit back and do nothing or
24 try to do something and we tried to do something here.
25 And we don't have anything else at the moment that is

1 as difficult a problem as red-shouldered hawk, except
2 maybe some moose draws.

3 Q. In the third full paragraph of this
4 document, Exhibit 946, Dr. Euler, there is an
5 indication that:

6 "...it is not known precisely how much
7 reduction in canopy closure
8 red-shouldered hawks can withstand before
9 they abandon nests or experience a
10 decrease in productivity."

11 This is the uncertainty that you have
12 referred to earlier; is that correct?

13 A. This is what that I referred to
14 earlier?

15 Q. Is this the uncertainty that you
16 referred to a few moments ago?

17 A. Part of it, yes.

18 Q. Would you agree with me, Dr. Euler,
19 that of the non-game species in the area of the
20 undertaking the Ministry probably knows more about the
21 red-shouldered hawk than perhaps any other species?

22 A. Well, that is really a difficult
23 question. See, I have got to think about all those
24 other non-game species there and think about how much
25 we know about them and then compare to what we know

1 about red-shouldered hawks.

2 No, I think there are probably some -- I
3 think there are other non-game species that we know
4 more about than the red-shouldered hawk.

5 Q. And what are some examples of those
6 species?

7 A. Black-throated blue warbler, Black
8 burning warbler, white-footed mice, short-tailed shrew.

9 Q. Are these species of a provincial or
10 local concern, Dr. Euler?

11 A. No.

12 Q. Are you aware -- let me focus the
13 question a little bit more specifically then. Of the
14 rare, threatened or endangered species in Ontario,
15 would you agree with me that the Ministry perhaps has
16 more data and has more knowledge about the
17 red-shouldered hawk than perhaps some of these other
18 species.

19 A. That is very difficult. You are
20 asking me a comparative knowledge question and I'm
21 really uncomfortable with trying to say we know more
22 about this one or more about that one. It's just a
23 very difficult question for me to answer.

24 Q. I appreciate that. I thought perhaps
25 you could give us a rough indication, but if you can't,

1 that is fine.

2 Can I ask you to turn to page 2 of this
3 document. In the very first paragraph there's an
4 indication that there should be a no-cut primary buffer
5 encompassing 10 hectares and extending at least 150
6 metres from the nest tree.

7 I'm presuming that recommendation is
8 based on the best information that the Ministry has at
9 this point?

10 A. Yes.

11 Q. And I take it that you agree with
12 that recommendation?

13 A. Yes.

14 Q. Then reading the first portion of the
15 third paragraph, there is a reference to an exemption
16 to this no-cut provision, and the example that is
17 given:

18 "... if access to a planned cut were
19 restricted."

20 Would you agree with me, Dr. Euler, that
21 if this exemption procedure or exemption process was
22 used or used extensively that the object and intent of
23 this resource manual would be undermined?

24 A. Well, that's possible, sure, if
25 someone deliberately set out to undermine it, they

1 could undermine it.

2 Q. As a professional biologist do you
3 agree with the recommendation that there be an
4 exemption procedure for the primary no-cut zone?

5 A. You have to have an exemption
6 procedure, yes, you just have no choice. The world
7 isn't so simple that you can make a rule that always
8 applies.

9 Q. I take it then that you are telling
10 me that, in your professional opinion as a wildlife
11 biologist, you are saying there should be no -- or that
12 there should be exemptions to the no-cut zone?

13 THE CHAIRMAN: That's what he said.

14 MR. LINDGREN: I was just asking him to
15 confirm that. I wasn't quite clear.

16 DR. EULER: Yes, I think the word I used
17 was an exemption procedure.

18 MR. LINDGREN: Q. In the next paragraph
19 there is a reference to the secondary buffer zone that
20 extends for an additional 150 metres, and then below
21 that is a statement that:

22 "We recognize that at least some
23 red-shouldered hawk nests will not be
24 encountered until an area is marked for
25 cutting."

1 And it goes on to indicate that:
2 "It is sometimes hard for tree markers to
3 identify a stick nest for red-shouldered
4 hawks."

5 Dr. Euler, has there been any thought
6 given by the Ministry to requiring a stick nest survey
7 or inventory prior to allocation; that is, during the
8 portion of the planning process when eligible areas are
9 being determined?

10 I mean, It seems to me that there are
11 going to be situations where the red-shouldered hawk
12 nests are unknown to the Ministry until the very point
13 that the tree markers are in the field identifying the
14 stands to be cut. Would there be any purpose in
15 requiring that kind of an inventory up front before
16 allocations are made?

17 DR. EULER: A. We are very concerned
18 about inventory and we are moving on several fronts to
19 do inventory of red-shouldered hawk everywhere, not
20 only where a timber cut is going to occur, but
21 everywhere. It is such a difficulty problem.

22 We are working with the Federation of
23 Ontario Naturalists to develop a survey procedure that
24 volunteers can work with, we have tree marker courses,
25 we have been at those tree marker courses teaching our

1 tree markers how to identify these nests and, as part
2 of our habitat inventory program, we are going to have
3 yet another effort in trying to develop ways of
4 inventory and survey red-shouldered hawk nests.

5 I think we are moving on that as fast as
6 we possibly can on at least three fronts.

7 Q. Should that be expressly incorporated
8 or integrated into the terms and conditions, or into
9 the timber management planning process itself?

10 A. Well, no. You see, again, we don't
11 do it that way. We carry on the survey business in the
12 wildlife program, not in the timber management planning
13 program.

14 Now, one can argue, as we have,
15 extensively about that, but I don't think it's
16 necessary. As long as you do it properly and fund it
17 properly, it doesn't matter which program it is in.
18 The key is, does the work get done.

19 MR. MARTEL: Can I ask a question,
20 because I am concerned. It says there that all
21 exemptions must be approved by the regional director,
22 that's the provision that we are talking about.
23 Doesn't that in fact drive home the point we made a
24 while ago, that you in essence really have this program
25 working, it might not be mandatory, but in fact there

1 is no way around it because you have got to get
2 exemption from the regional director, so in fact the
3 manager really must comply with what's here?

4 DR. EULER: You are a very perceptive
5 man, Mr. Martel, and that's correct.

6 MR. LINDGREN: Q. Can I ask you to turn
7 to page 3 of this document, Dr. Euler. And just to
8 paraphrase the first full paragraph, it is recommended
9 that an uncut block of 100 hectares of continuous
10 mature and overmature hardwoods be left in the planning
11 unit. And there is an indication in the next line that
12 this block of habitat should extend at least 400 metres
13 from a body of water, and in the final portion of that
14 paragraph there is an indication that 10 per cent of
15 the planning area should be left uncut if at all
16 possible.

17 I take it that you agree with that
18 recommendation?

19 DR. EULER: A. Yes, mm-hmm.

20 Q. Skipping the next paragraph to the
21 paragraph that reads:

22 "These recommendations are an interim
23 measure until such time that we can
24 more precisely determine how
25 red-shouldered hawk habitat should be

1 managed."

2 So I take it this really is an interim
3 direction. When can we expect to see this supplanted
4 by a more formal monitoring program or guidelines?

5 A. I can't give you an exact date. This
6 is an ongoing and active program, we will move it into
7 a more mandatory state as soon as we feel that we have
8 the data to back us up solidly. I hope that's very
9 soon, and I just can't be more specific than that.

10 Q. I understand that, Dr. Euler. Now,
11 just before we leave this exhibit, I would ask you to
12 turn to page 1. There is an indication that this is
13 directed to the regional directors of the Algonquin and
14 eastern regions.

15 Can you confirm for me that the
16 red-shouldered hawk may also be found in the
17 northeastern region?

18 A. It may be found in the northeastern
19 region, yes.

20 Q. Is there any intention to expand this
21 direction or memo to the northeastern region?

22 A. Yes, at an appropriate time it would
23 be. We felt that our major problem immediately was
24 Algonquin and eastern and we moved there first.

25 Q. I would just like to leave this

1 exhibit, Dr. Euler, by indicating that we view this as
2 a very positive initiative.

3 Can I just ask you: Can we expect to see
4 this kind of initiative for other rare, threatened or
5 endangered species?

6 A. Yes.

7 Q. Thank you. Dr. Euler, The obvious
8 question is when, but you have indicated you can't give
9 us any specific answer.

10 A. No, I can't, no. We are moving on
11 these problems as fast as we can in a measured way and
12 we will do it as best we can.

13 Q. Thank you, Dr. Euler.

14 Mr. Gordon, perhaps I can refer to you.
15 And could I ask you to pull out a copy of Exhibit 936
16 which is the evidence that you gave on funding.

17 MR. GORDON: A. I have it.

18 Q. Now, in the witness statement there
19 is an indication that the three effectiveness studies
20 will cost approximately \$46-million and will take 13
21 years to complete. Do you recall that evidence, Mr.
22 Gordon?

23 A. Yes, I do. That was in I believe Mr.
24 Straight's paper.

25 Q. That's correct. That's page 428 for

1 the purposes of the record.

2 If I could ask you to turn to page 5 of
3 Exhibit 936 and looking at the funding that's been
4 allocated for 1989-90 for the provincial effects and
5 effectiveness monitoring programs, can you confirm for
6 me that approximately \$510,000 have been allocated?

7 A. That's correct.

8 Q. But if we read the cost of full
9 implementation on the right-hand column, approximately
10 \$3-million would be required annually to carry those
11 programs out?

12 A. Yeah. I think if we look at the
13 first four categories; moose, other wildlife, aquatic
14 and tourism, I think we are looking at a total of an
15 estimated annual cost, full implementation of
16 4.3-million.

17 Q. For the purposes of this question I
18 was excluding the other wildlife category since it is
19 not represented in the 1989-90 allocation.

20 Nevertheless, I take it that you would
21 agree with me that there does seem to be a significant
22 shortfall in the money that should be made available
23 annually to complete these programs, at least for the
24 1989 fiscal year?

25 A. No, I wouldn't say that.

1 Q. Well then, perhaps we should look at
2 the 1990-91 tentative budget. There again seems to be
3 a discrepancy between what the budget calls for and
4 what the estimated costs of full implementation will
5 be. Would you agree with me so far?

6 A. Yes. I will make a comment and then
7 perhaps if you want to get into the specifics of how
8 much money we should be spending in these programs
9 right now, I would recommend that you direct your
10 questions to Dr. Euler or Dr. MacLean or Mr. Straight.

11 And the comment I would like to make is
12 we are intending to move up that full implementation
13 but it would be premature to do that right now, and
14 that we don't have a detailed plan in place to
15 implement and, therefore, it's not necessary to have
16 all those dollars available in 89-90 or 90-91.

17 So there is a real reason as to why we
18 are not spending that money right now, we don't know
19 how to spend it right now and we want to go through a
20 rigorous planning process which will include, for
21 example, the stakeholder committee and other parties to
22 ensure that we are going in the right direction. And
23 when we have a complete and comprehensive plan in
24 place, then we will move towards spending that
25 \$3-million or so a year.

1 Q. Perhaps then, Mr. Gordon, I can
2 direct your attention to page 6 of the same exhibit so
3 we can look at a program that is currently underway and
4 a program which some Ministry money has been allocated
5 and, in particular, I am referring to the ANSI program
6 which is found on page 6 under paragraph 8.2.

7 There is an indication that the full
8 annual cost of implementation would be in the order of
9 \$500,000; in 1989-90 some \$75,000 were allocated, in
10 1991 some \$200,000 have been budgeted.

11 Now, Mr. Gordon, as you may be aware,
12 earlier in this hearing we've heard some evidence about
13 this ANSI program and I would refer you to Volume 56 of
14 the transcript, page 9611, and on that page and the
15 following pages to page 9614, Mr. Beechey gave evidence
16 on the Minister's 1987 announcement about the ANSI
17 program that the Ministrty was about to put into place
18 and that it was about to fund.

19 On page 9611 there is an indication that
20 the MNR is putting money into that effort, \$500,000 a
21 year over five years for a total of \$2.5-million.

22 Can you confirm that that passage is
23 there, Mr. Gordon?

24 A. Yes, it is.

25 Q. And that is in fact a quotation from

1 Mr. Kerrio's speech on the subject matter?

2 A. That's correct.

3 Q. At pages 9613 and on to the next
4 page, there is an indication that at the time that Mr.
5 Beechey was giving evidence the program was in its
6 second year of the five years; is that correct? This
7 is at page 9613 at the top.

8 A. I believe you are correct. I'm not
9 totally familiar with this program.

10 Q. My purpose here, Mr. Gordon, is to
11 bring to your attention the fact that Mr. Beechey
12 indicated that the Ministry in 1987 committed itself to
13 provide an average of \$500,000 a year to the ANSI
14 program.

15 Now, when we look at your document, page
16 6, there is an indication that in 1989-90 only \$75,000
17 is allocated, and in 1991 some \$200,000 has been
18 allocated. That seems to me a significant shortfall
19 between what was promised and what was received.

20 My question to you, Mr. Gordon, is: Has
21 this shortfall impaired the Ministry's ability to
22 initiate the work contemplated by the Minister in 1987?

23 A. I don't have the knowledge to answer
24 that question.

25 Q. Does anybody else on the panel have

1 that knowledge?

2 MR. MARTEL: Are we talking different
3 money? Let me ask: Is the money that was announced by
4 the Minister, the 500,000, still in the pot and is this
5 additional funding over and above the \$500,000?

6 MR. GORDON: I am not close enough to the
7 ANSI program to be able to answer that question and
8 that's exactly the question I have and, therefore, I
9 can't make a comment.

10 MR. MARTEL: Maybe we could find out.

11 MR. LINDGREN: Will you undertake to find
12 out?

13 MR. GORDON: I will undertake to do that,
14 Mr. Martel.

15 MR. MARTEL: Thank you.

16 MR. LINDGREN: Q. Mr. Gordon, in term
17 and condition 46, there is an indication that:

18 "Within five years of this approval, the
19 Ministry of Natural Resources will
20 complete surveys and identify candidate
21 life science Areas of Natural and
22 Scientific Interest (ANSIs) in all Site
23 Regions and significant earth science
24 ANSIs within the area of the undertaking
25 for use in timber management...."

1 In light of the shortfall that we have
2 seen to this point in terms of funding --

3 THE CHAIRMAN: Well, just a moment. We
4 don't know that it is a shortfall.

5 MR. LINDGREN: Okay.

6 THE CHAIRMAN: One of the things they are
7 going to find out is whether or not this refers to new
8 funding to implement the conditions and doesn't
9 necessarily refer to the monies that are already
10 available for the ANSI program. Is that not what you
11 are going to look at, Mr. Gordon?

12 MR. GORDON: That's correct. And also,
13 Mr. Chairman, if you look at the specific wording in
14 46, and I think we are trying to be fairly
15 straightforward and honest with the wording there, what
16 it says is "within five years of this approval".

17 So at the point in time if the Board
18 feels that this is an appropriate condition, we would
19 then be committed to carrying that out. So, you know,
20 we still have a number of years to get to that point --
21 well, hopefully not a number of years, but it's in the
22 future before your approval may or may not come.

23 MR. LINDGREN: Q. Mr. Gordon, you have
24 the transcript before you. Can I ask you to turn to
25 page 9611 and at line 22 Ms. Swenarchuk asked:

1 "And is it correct that a shortfall in
2 that funding occurred in this year?"

3 And the answer was:

4 "We did experience some constraint."

5 It would appear to me there has been a
6 shortfall, but subject to any further enquiries that
7 you want to make on this matter, I would like to ask
8 you, that assuming there is a shortfall or has been a
9 shortfall, how this impacts on the ability of the
10 Ministry to implement or to comply with term and
11 condition 46?

12 MR. GORDON: A. On the assumption - and
13 you may be very well correct that there is a shortfall
14 and I will undertake to confirm that - on the
15 assumption that there is a shortfall, it will not
16 hamper our ability to meet the intent of condition No.
17 46 because what we are saying in condition No. 46 is
18 that within five years of the approval date we will do
19 what we said we will do in condition 46. It is a fine
20 line, but that line is there.

21 Q. Well, let me ask you my earlier
22 question again. If it is your position that the
23 Ministry's ability to comply with this term and
24 condition will not be impaired, will the Ministry's
25 ability to carry out the initiative promised by Mr.

1 Kerrio be in any way impaired by this apparent
2 shortfall?

3 A. I can't comment on that.

4 MS. MURPHY: And I wasn't here for Panel
5 10, but my friend has just read the transcript and it
6 sounds like the cross-examination on this matter took
7 place at that time just from the basis of what we heard
8 right here.

9 THE CHAIRMAN: Well, let's leave it, Mr.
10 Lindgren, on the basis that if it is imposed as a term
11 and condition of any approval that issues from this
12 Board, presumably they are going to have to find the
13 money. If there is a shortfall, they are going to have
14 to make it up, and the condition reads:

15 "They will complete surveys within five
16 years."

17 Presumably if it is imposed in that
18 fashion there is some obligation on the Ministry to do
19 just that or they are in breach of the approval.

20 MR. LINDGREN: That's fine, Mr. Chairman.

21 Q. One final question on the provincial
22 effectiveness monitoring program. Perhaps this would
23 be best answered by Mr. Cary.

24 To this point, as I understand it, the
25 Ministry has determined that it is necessary to spend

1 money on scientific studies to determine that
2 prescriptions based on the guidelines do what they are
3 supposed to do. Is that a fair summary of what the
4 effectiveness monitoring program is?

5 MR. CARY: A. Could you repeat that, Mr.
6 Lindgren?

7 Q. My question is: In essence, the
8 effectiveness monitoring program is largely designed to
9 see if prescriptions based on the guidelines, the
10 tourism, the moose and the fish guidelines, do what
11 they are supposed to do; and, that is, protect some of
12 these other resource values. That's the essence of the
13 effectiveness monitoring program; is it not?

14 A. Yes, I believe so.

15 Q. Now, then turning to the
16 silvicultural guides, why hasn't the Ministry committed
17 any money to see if prescriptions based on the
18 silvicultural guides do what they are supposed to do
19 which is to ensure the long-term site productivity and
20 to ensure a continuous and predictable supply of wood
21 to industry?

22 A. Well, we have just revised, as you
23 know, the silvicultural guides and indeed we have
24 updated the guides, we have made sure that all relevant
25 and the latest information is contained in the guides.

1 We have just released them, as you know.

2 There is ongoing investigation by TDUs,
3 technology development units, we will be updating the
4 guides in the future, Forest Resources Group have that
5 mandate when new information becomes available. We
6 believe they are good guides.

7 Q. Now, you've indicated that there is
8 some ongoing work being carried out by the TDUs to
9 determine how the guidelines could be improved perhaps?

10 A. We are talking about the
11 silvicultural guides.

12 Q. That's correct.

13 A. Not provincial guidelines like the
14 moose, tourism and fisheries.

15 Q. That's right.

16 A. So there is a difference.

17 Q. I appreciate the difference. My
18 question to you, sir, is this: There is nothing
19 analogous to the provincial effectiveness monitoring
20 program for the silvicultural guides?

21 MS. MURPHY: Mr. Chairman, may I just
22 interject here. The evidence of this panel, the
23 written evidence is contained in the witness statement
24 and we did not lead all of the evidence and go through
25 all of the evidence in-chief.

1 I would like to draw your attention and
2 my friend's attention to the section that starts at
3 page 566 which is in the third document which
4 discusses, in particular, with respect to generally the
5 matters he is raising, so that we are ensured that we
6 are looking at all of the evidence of the panel.

7 MR. CARY: And, Mr. Lindgren, Mr. Gordon,
8 his bailiwick is effectiveness monitoring of the timber
9 management activities, not mine; I am really more
10 compliance oriented. So perhaps he might want to add
11 something.

12 MR. LINDGREN: Q. Mr. Gordon?

13 MR. GORDON: A. What's the question,
14 please?

15 Q. I hesitate to ask it for a third
16 time, but I will in any event. There is an
17 effectiveness monitoring program for the provincial
18 guidelines; correct?

19 A. That's correct.

20 Q. There appears to be no analogous
21 provincial effectiveness program for the silvicultural
22 guides; is that correct?

23 A. Yes.

24 Q. The next question is: Has the
25 Ministry -- what work has the Ministry done to

1 determine that it is not necessary to do a provincial
2 effectiveness program for the guides?

3 A. The silvicultural guides I believe
4 have a slightly different purpose than the other
5 provincial guidelines that you have been discussing
6 during the morning, and basically they are a compendium
7 of available literature to provide advice in one place
8 to the unit forester.

9 And it is the position of MNR that it is
10 not necessary to develop a discreet and expensive
11 provincial effectiveness monitoring program relative to
12 those guidelines. We believe we have other mechanisms
13 in place that have worked and will work in the future
14 to improve those guidelines where necessary.

15 Q. While we are on the subject, Mr.
16 Gordon, can I ask you to turn to page 569 of the
17 witness statement.

18 A. I have got it.

19 Q. In the third full paragraph, the
20 final sentence indicates that:

21 "The OMNR is presently committed to
22 updating the silvicultural guides if
23 warranted every five years."

24 A. That's correct.

25 Q. Can you confirm that this expressed

1 commitment is not set out in term and condition No. 40
2 or 41 which speaks to the issue of silvicultural
3 guides?

4 A. That's correct.

5 Q. Would the MNR have any difficulty if
6 that were to be expressly incorporated into term and
7 condition No. 41, that frequency of revision? I mean,
8 either the Ministry --

9 THE CHAIRMAN: Ms. Murphy, it is a fair
10 question.

11 MS. MURPHY: I am not suggesting it is
12 not a fair question. I am answering in part from
13 counsel's point of view, that with respect to terms and
14 conditions I think there would be a concern about
15 wanting something that said 'if warranted' in the term
16 and condition, because it is very difficult then to
17 figure out what you are expected to do.

18 THE CHAIRMAN: Well, that could be argued
19 at the end when we are dealing with conditions.

20 MR. GORDON: Without understanding the
21 legal implications of what Ms. Murphy said, MNR would
22 have no problem - no, it is my opinion - I would have
23 no problem with an addition to condition 41 that use
24 the same words that was in the third paragraph on page
25 569.

1 THE CHAIRMAN: And then you can fight it
2 out in court whether or not it was warranted.

3 MR. LINDGREN: Well, that leads me to my
4 next question, Mr. Chairman.

5 Q. Would you have any problems, Mr.
6 Gordon, if the term and condition simply indicated that
7 the guides were to be updated on a five-year basis?

8 MR. GORDON: A. Yes.

9 Q. You would have a problem with that?

10 A. Yes.

11 Q. Now, assuming that this research that
12 you've referred to earlier is ongoing and the results
13 of that research will be constantly available to the
14 Ministry, certainly there would be a need or it would
15 be desirable to somehow take stock of that accumulated
16 knowledge and to incorporate it into the guides?

17 A. That's correct and that's what --

18 Q. And why can't that be done on a
19 five-year basis?

20 A. And that's exactly what the wording
21 in paragraph 3 says, that we will take stock of that
22 and if there are significant steps -- if we are moving
23 forward in our knowledge relative to silviculture, then
24 we would and it would be appropriate to amend our
25 guides at that time.

1 I cannot guarantee that we will be making
2 those leaps in knowledge, I sure hope so.

3 Q. One final question on this point, Mr.
4 Gordon. Can you confirm for me that although the
5 various silvicultural guides have been revised at least
6 once in their existence, they have not been updated on
7 a five-year basis?

8 A. That's correct.

9 Q. Thank you.

10 THE CHAIRMAN: Has it been necessary to
11 do them on more than a five-year basis, more
12 frequently?

13 MR. GORDON: It would be my professional
14 opinion that it wouldn't be necessary to do it more
15 than every five years, but that it would have been
16 appropriate for MNR to update them earlier than we did
17 this time because some of them were in place since
18 1974.

19 MR. LINDGREN: Q. Thank you, Mr. Gordon.
20 Perhaps, Mr. Straight, we can return to you. I would
21 ask you to turn to page 432 of the witness statement,
22 and here we are dealing with the local effects and
23 effectiveness monitoring program.

24 MR. STRAIGHT: A. Yes, I have it.

25 Q. In the first full paragraph there is

1 an indication that:

2 "In the course of inspections, staff may
3 observe indications of adverse effects.
4 These will usually be readily observable
5 undesirable situations such as stream
6 siltation or water ponding."

7 Now, keeping that comment in mind, I
8 would ask you to turn to Table 1 at page 438.

9 A. Yes.

10 Q. We see in the right-hand column an
11 indication as to whether or not the effect listed on
12 the left-hand column is likely to be observed or picked
13 up during local monitoring; is that correct?

14 A. If there was a potential to pick up
15 some observations about that effect, yes.

16 Q. So if the potential to pick it up was
17 yes, we would find a 'yes' in the right-hand column?

18 A. If there was some opportunity, yes,
19 or some potential; that's correct.

20 Q. Now, I have gone through Table No. 1,
21 Mr. Straight. Can you confirm for me, under the far
22 right-hand column there are 11 yeses, 23 noes, and one
23 possible and one reference to a special study. You
24 don't have to count them now, but perhaps you can
25 undertake to verify that at the break.

1 THE CHAIRMAN: Okay. Let's get to the
2 question.

3 MR. LINDGREN: Q. The question is:
4 Assuming that those figures are correct, Mr. Straight,
5 would you agree with me that the local effects
6 monitoring program will likely pick up less than half
7 of the potential effects on the moose, tourism and
8 aquatic values?

9 MR. STRAIGHT: A. At the local level
10 there are those limitations, that's correct, and that's
11 why basically we put that into lead evidence. That's
12 correct.

13 Q. In particular I would like to look at
14 some of these effects, and perhaps Dr. MacLean you are
15 the best one to speak to the matters pertaining to the
16 aquatic environment.

17 On page 438, item No. 1 under Resource
18 Value, there is -- the resource value is identified as
19 aquatic environment, stream fish, spawning egg stages,
20 and the column next to it, Timber Management Activity,
21 we see in the third item from the top timber harvest.
22 Do you have that, Dr. MacLean?

23 DR. MacLEAN: A. Yes, I do.

24 Q. Now, reading across the table for
25 timber harvest, we see an indication in the next column

1 that potentially timber harvest can result in increased
2 water temperature, but then this table goes on to
3 indicate that it is not listed or regarded as a
4 significant effect.

5 Then continuing across the table, we see
6 that this potential effect will not be measured in the
7 provincial monitoring program or in the local
8 monitoring program, there is noes under both columns.

9 And my question is this, Dr. MacLean:
10 Aside from the ESSA exercise, what studies has the MNR
11 conducted in the area of the undertaking to demonstrate
12 that this is not a significant concern?

13 A. None that I know of.

14 Q. In other words then, under the column
15 Significant Effects the 'no' should be uncertain?

16 A. No, it was the judgment of the ESSA
17 participants this was not a significant effect. That's
18 what the 'no' indicates.

19 Q. Thank you. Turning to page 439, in
20 the second item under Timber Management Action there is
21 a reference to timber harvest/renewal, and the
22 potential timber management effect there is decreases
23 in aquatic macrophytes from herbicides. Again, we see
24 an indication that this will not be locally and
25 provincially monitored.

1 Can you confirm for me again, Dr. Euler,
2 that the MNR has conducted no studies in the area of
3 the undertaking to determine that this is not a
4 significant concern?

5 A. You asked Dr. Euler?

6 Q. Sorry, Dr. MacLean.

7 A. There has been nothing beyond the
8 ESSA study that I know of.

9 Q. Okay. Perhaps then to speed this up,
10 can you confirm for me that a number of other effects
11 will not be measured either at the provincial or local
12 level according to Table No. 1, and this includes the
13 effect of changed lake water levels on spawning fish,
14 which is item No. 3 on page 439, the effect of water
15 temperature on resident fish, the effect of increased
16 phosphorus and fish growth, I am still reading from
17 page 439.

18 Now, again, I take it that your answer is
19 yes, the ESSA exercise did not identify those as
20 significant concerns so that's why they are not going
21 to be monitored; is that correct?

22 A. Two of the ones that you have
23 identified we have amended, and I think you've received
24 that amendment such that the -- under item 3, timber
25 harvest/renewal, change of lake water levels, the

1 effect will be measured.

2 Q. Is that --

3 A. In the provincial monitoring program.

4 And under No. 4, timber harvest, increased phosphorus
5 and fish growth, again we've amended that and I think
6 notified you that it will be monitored as part of the
7 provincial program.

8 Q. Thank you, Dr. MacLean. I did try to
9 incorporate those changes but I think I missed one or
10 two.

11 Looking at resource value No. 5 on the
12 aquatic environment, we see the timber management
13 action of pesticide application and there are a number
14 of potential effects listed there such as the effect on
15 fish survival, the effect on the aquatic food chain and
16 on bioaccumulation.

17 Now, with respect to these effects of
18 pesticide application, Dr. MacLean, has the MNR
19 conducted any studies in the area of the undertaking to
20 demonstrate these are not significant concerns?

21 A. My understanding that MNR has not,
22 other agencies have, and I think that evidence was
23 treated in earlier panels.

24 Q. Dr. Euler, if I could ask you to turn
25 to page 440, resource value No. 7 is moose.

1 DR. EULER: A. Yes.

2 Q. We see that one of the effects of
3 roads and landings in timber harvest is increased
4 hunting effort. We see this listed as not being a
5 significant effect and, therefore, it is not going to
6 be measured at the provincial or local level; is that
7 correct, Dr. Euler?

8 A. Yes, that's correct.

9 Q. Correct me if I am wrong, Dr. Euler,
10 but was it not your evidence in Panel 10 that increased
11 hunting pressure from increased access can in fact lead
12 to greater moose mortality?

13 Isn't hunting or increased hunting one of
14 the six guns of moose population management that you
15 have referred to?

16 A. Hunting is certainly one of the six
17 guns and hunting management is one of the six guns,
18 yes.

19 You have to understand, however, that
20 this is -- that we manage moose on a management unit
21 basis and while we know that when timber harvest occurs
22 more hunting effort is applied in this portion of the
23 management unit, it is the management unit population
24 that we are concerned with, and because we control the
25 kill, we felt that it wasn't a significant effect on

1 the population in the management unit.

2 Q. I take this table to indicate that in
3 the Ministry's view increased hunting effort is not a
4 significant effect either at the management unit level,
5 district level, regional level or provincial level. Am
6 I over-reading that statement?

7 A. Yes, you are not getting that right.
8 Hunting effort is an important part of our management.
9 And, see, this is just the fact that when you put in a
10 road the hunters drive on that road and in that local
11 area more moose may be killed, but if they are killed
12 in that local area, then another moose over in some
13 other part of the unit is not killed and, therefore,
14 the population in the unit remains at a targeted level.

15 Q. Would it be fair to say then, Dr.
16 Euler, in that circumstance the effect of increased
17 hunting effort may be negative or significant locally
18 in a local area but perhaps not at the
19 regional/provincial level?

20 A. Yes.

21 Q. Thank you. Mr. Straight, can I ask
22 you to return to page 432. Again, I would direct your
23 attention to the first full paragraph, and there is an
24 indication that:

25 "Examination of timber management

1 activities to ensure compliance with
2 prescriptions takes place on all areas of
3 operations. Special attention is given
4 to areas of concern."

5 Now, in his evidence Mr. Cary suggested
6 that in a year MNR staff could inspect up to 200 AOCs.
7 Do you recall that testimony, Mr. Cary?

8 MR. CARY: A. Yes, I do.

9 Q. Translated, this means that there
10 could be up to a thousand AOCs in the five-year plan;
11 is that correct?

12 A. Yes.

13 Q. Mr. Cary, can you direct us to any
14 approved timber management plan that has a thousand
15 AOCs contained within it?

16 A. I cannot name one off the top of my
17 head, no. But I remember asking questions about the
18 range and I gave you that range of about 200 a year, it
19 could be more or less. I can't name one off the top of
20 my head.

21 Q. Well, and only timber management plan
22 we se in this hearing, which is the Red Lake Plan, we
23 have seen approximately three dozen AOCs, and we regard
24 this as a fairly important statement.

25 Can you undertake to advise me if there

1 are in fact any timber management plan that has a
2 number of AOCs in the range of a thousand as opposed to
3 three dozen?

4 MS. MURPHY: The question was asked of
5 the witnesses in Panel 15, as I recall, and they
6 indicated that there were in fact -- at least there was
7 in fact in their knowledge plans that has that number.
8 The issue was raised and dealt with in Panel 15. Did
9 you want the specific one?

10 MR. LINDGREN: I would certainly be
11 interested in obtaining the plan, the name of the plan,
12 the identity of the plan, given that this obviously has
13 a direct bearing on the ability of the Ministry to
14 effectively monitor a thousand AOCs over a five-year
15 period.

16 MS. MURPHY: We can deal with this on our
17 own, if you like. That's fine.

18 MR. LINDGREN: Q. Now, you've indicated
19 that the range of AOCs in a given year could be up to
20 200. What is the average, in your professional
21 experience, the average number of AOCs in any year and
22 in a timber management plan?

23 MR. CARY: A. I can't remember the
24 bottom of the range, I think it was 50. So somewhere
25 between 50 and 200 would be the average.

1 Q. Well, that's a range. What's the
2 average?

3 THE CHAIRMAN: Well...

4 MR. CARY: 125.

5 MR. LINDGREN: Thank you.

6 Q. If a timber management plan did have
7 up to 200 in the year and a thousand over the five-year
8 term, would you agree with me that the local effects
9 monitoring program could result in a considerable paper
10 war?

11 MR. CARY: A. The compliance monitoring
12 program on those areas of concern could be quite
13 elaborate and extensive, yes. But you said effects
14 monitoring?

15 Q. I said the local effects and
16 effectiveness monitoring. I have in mind, for example,
17 the area inspection process. Now, obviously if an AOC
18 is --

19 A. That registers compliance.

20 Q. With prescriptions for the AOC.

21 A. That's correct.

22 Q. This conceivably could result in the
23 production of hundreds and hundreds of area inspection
24 reports that are to be stored and filed at the district
25 office; is that correct?

1 A. Over a five-year period?

2 Q. That's right.

3 A. Yes, you are correct.

4 THE CHAIRMAN: The information would be
5 traceable though; wouldn't it?

6 MR. LINDGREN: Well, let's pursue that,
7 Mr. Chairman.

8 Q. How long does the Ministry intend to
9 retain those records?

10 MR. CARY: A. I believe...

11 MR. GORDON: A. I can't find it right
12 now, but I believe it is in a term and condition--

13 MR. CARY: A. Yes.

14 MR. GORDON: A. --and I believe our
15 commitment is to keep them on file for at least one
16 year after the end of the planning period.

17 MR. CARY: A. If you will give me a
18 moment I can try and find the term and condition.

19 MS. MURPHY: No. 49, at the bottom of 49.

20 MR. LINDGREN: Q. It indicates, Mr.
21 Cary, that:

22 "These area inspection reports will be
23 available for public inspection until at
24 least one year after the expiry of the
25 timber management plan."

1 MR. CARY: A. Yes.

2 Q. I think in your evidence, or perhaps
3 it was Dr. Osborn's evidence, there was a suggestion
4 that these area inspection forms will not be summarized
5 or aggregated at either the district, the regional or
6 provincial levels; is that correct?

7 A. It was my evidence and I said that
8 they will be used in the report of past forest
9 operations at the management unit level to register
10 compliance with the area of concern prescriptions, but
11 they wouldn't be aggregated upwards because it is an
12 impossible task. I believe that's on the record.

13 Q. That's correct. And you did give
14 that evidence. I am, however, perplexed as to why the
15 Ministry perceives this as being an impossible task;
16 that is, aggregating the area inspection reports to
17 some higher level?

18 A. I would have to look to what I said
19 in the transcript, but essentially the data that the
20 area inspector collects is not quantifiable or
21 aggregateable. It's simply a record of -- an ongoing
22 record of whether that prescription was met.

23 We don't see any requirement to aggregate
24 and we don't see any sense of why you would aggregate
25 area inspections from one management unit up to a

1 district level and then to a region or to a provincial
2 level. We don't think it makes sense.

3 Q. I think we will return to this issue
4 perhaps this afternoon, Mr. Cary, to give you an
5 opportunity to read the transcript and I will pose
6 further questions on that, and I can advise you I will
7 be looking at page 59 which is the area inspection
8 form.

9 A. I will.

10 Q. Dr. MacLean, returning to you. Can I
11 ask you to turn to page 435 of the witness statement.
12 At the last paragraph on this page, Dr. MacLean, there
13 is an indication that:

14 "At the local level, OMNR normally
15 monitors populations of fish and wildlife
16 resources."

17 Now, stopping right there. Can you
18 confirm for me that there has been concern in the
19 scientific literature about the way in which the
20 Ministry has been carrying out its fish population
21 monitoring program and, in particular, there is concern
22 about sampling bias in these fish population surveys.
23 Can you confirm that, Dr. MacLean?

24 DR. MacLEAN: A. I would have to point
25 out that you are confusing inventory and survey with

1 monitoring. I think the reference that's on page 435
2 is to local monitoring programs rather than to surveys
3 or inventories.

4 Q. That may well be, but my ultimate
5 question here will be to relate that kind of concern to
6 the inventory process.

7 MR. LINDGREN: I would like to introduce
8 as the next exhibit, Mr. Chairman, a document entitled:
9 A Model of Bias in Lake Selection for Survey, authored
10 by C.K. Minns, M-i-n-n-s. The document is dated
11 November, 1986, published under the auspices of the
12 Canadian Technical Report of Fisheries and Aquatic
13 Sciences.

14 THE CHAIRMAN: Exhibit 947.

15 ---EXHIBIT NO. 947: Document entitled: A Model of
16 Bias in Lake Selection for Survey,
17 authored by C.K. Minns, dated
November, 1986.

18 MR. LINDGREN: Q. Dr. MacLean, I take it
19 that you are familiar with this document in that you
20 are mentioned in the acknowledgements at page 12; is
21 that correct?

22 DR. MacLEAN: A. I did read an earlier
23 draft of this paper. I did not read the completed
24 paper until you provided it to me.

25 Q. So I take it that you have had an

1 opportunity to read the revised version?

2 A. Yes, I have.

3 Q. It is not my intention to go through
4 in any particular detail, in fact for my purposes, Dr.
5 MacLean, I would simply refer you to the abstract, page
6 (iii). And looking halfway through that paragraph
7 there is an indication that this author found that
8 there is a bias towards lakes with four game fish and
9 he found this bias in the MNR inventory database and
10 the game fish in particular he is referring to include
11 brook trout, lake trout, small mouth bass and walleye.

12 The author then suggests that these four
13 game fish species are represented in the database and
14 that unsurveyed lakes, if they have game fish, will
15 likely only have one of the four species present and,
16 as he indicates in the remainder of the document, he
17 discusses alternative schemes for eliminating or
18 accommodating the biases.

19 Now, first of all, Dr. MacLean, can I ask
20 you if you agree with the basic thrust of this article?
21 Do you agree with the results that he found?

22 A. The basic thrust of the article, as I
23 read it, is that given the objectives that Dr. Minns
24 had, which was to estimate the total size of the
25 fisheries resource in Ontario and what the impacts of

1 acid rain might be on that resource, that the database
2 was biased. It was biased by the objectives that the
3 resource manager had in terms of what those resource
4 managers were collecting the data for, which was a
5 different purpose.

6 So in terms of being able to extrapolate
7 to the whole resource, which is what Dr. Minns wanted
8 to do, the dataset was statistically biased.

9 Q. Thank you. Now, he was looking at
10 the provincial inventory; was he not?

11 A. That's correct.

12 Q. Now, my question is this, Dr.
13 MacLean: Given that the proposed provincial aquatics
14 monitoring program is going to be looking at a small
15 number of lakes, what are the implications of the
16 findings of this article in the selection of lake study
17 areas; in other words, how does the Ministry intend to
18 avoid this perceived bias problem, particularly as it
19 attempts to extrapolate the results of the study areas
20 to across the province?

21 A. I think we did discuss this item in
22 the update that we provided on October 5th. I'm not
23 sure of the exhibit number.

24 We indicated in that update that
25 representativeness of the chosen lakes was a concern,

1 that we would be conducting data collections prior to
2 the selection of the final study sites to ensure that,
3 in terms of community composition and water quality at
4 least, the lakes were representative of a broader set
5 of lakes that we wanted to extrapolate to.

6 Q. This leads to me the question I posed
7 to you yesterday; and, that is: Would it not be
8 desirable or advisable, in order to assure that the
9 lakes are representative, to increase the number of
10 lakes that will be looked at?

11 A. I guess my response to you yesterday
12 was not entirely a clear one. My feeling at this time
13 is, given the uncertainties we have, especially in many
14 of the major processes we are dealing with, that
15 expanding the study design to a larger set of lakes
16 really raises the possibility that we will be wasting
17 money, that we will be replicating unnecessarily.

18 I think what we have put in place is a
19 process that takes a frequent look at what it is we are
20 doing based on a number of study sites we have
21 initially chosen, and identifies continuing concerns
22 with those studies that we have in place; and if there
23 are difficulties with those, if we are not able to
24 extrapolate to the full set, which is what we want to
25 be able to do, we will have to deal with that in terms

1 of project design.

2 We have put in place an adaptive process
3 to take care of the concern I think that you have, but
4 at this time there is a high probability in trying to
5 choose which studies in which lakes, that we would be
6 wasting money by increasing the number of lakes
7 substantially.

8 Q. Thank you. Mr. Straight, perhaps we
9 can return to you and I would ask you to turn to page
10 444 of the witness statement.

11 MR. STRAIGHT: A. Yes.

12 Q. I am not going to read the relevant
13 portions into the record, but I will paraphrase them.
14 The last two paragraphs suggest that for cavity
15 dwellers and for area-sensitive species the actual
16 impact of timber management is unknown to the Ministry,
17 and for that reason the Ministry is going to assess
18 population trends. Is that a fair reading of those two
19 paragraphs, Mr. Straight?

20 A. Could I just read that again?

21 Q. Certainly.

22 MR. MARTEL: What page are you dealing
23 with, Mr. Lindgren, please?

24 MR. LINDGREN: Page 444.

25 MR. MARTEL: Thank you.

1 MR. STRAIGHT: Now, could you repeat your
2 question again, please, Mr. Lindgren?

3 MR. LINDGREN: Q. Well, I am attempting
4 to paraphrase the last two paragraphs on the page, Mr.
5 Straight.

6 I am suggesting to you that these
7 paragraphs indicate that for cavity dwellers and for
8 area-sensitive species, the actual impact of timber
9 management is unknown to the MNR and this is why the
10 MNR is going to assess population trends?

11 MR. STRAIGHT: A. That in part is
12 certainly correct. We are concerned that there may not
13 be habitat provided for those species.

14 And in my understanding of what Dr.
15 Euler's evidence, which it was back in Panel 10
16 primarily, was that if there are species for which we
17 should have some concern based on our current
18 knowledge, those categories of species are the ones
19 that we should look at first as a primary focus.

20 Q. Aside from monitoring the population
21 of these species, Mr. Straight, would you agree that it
22 may be more prudent to implement a management system
23 that ensures that the habitat and life cycle needs of
24 the species are provided?

25 A. I think if you want an answer, ask

1 that question of the expert, he's sitting beside me,
2 and I think he has really spent a fair amount of time
3 dealing with those kinds of issues, but--

4 Q. That's fair enough. Dr. Euler?

5 A. --do you want to rephrase your
6 question.

7 Q. Did you hear the question, Dr. Euler?

8 DR. EULER: A. Yes, I did, but just in
9 the interest of clarity and accuracy, would you mind
10 repeating it?

11 Q. The paragraphs indicate simply that
12 the MNR is going to assess population trends for cavity
13 dwellers and area-sensitive species--

14 A. Yes.

15 Q. --without actually identifying what
16 those species are.

17 A. Yes.

18 Q. My question was this: Aside from
19 monitoring, merely monitoring these populations, would
20 you agree that it might be more prudent to implement a
21 management system now that ensures that the habitat and
22 the life cycle needs of these species are provided?

23 A. See, the problem is, what if you
24 don't need to do that, what if they are already being
25 taken care of by the current practice. See, that's our

1 concern.

2 Our evidence -- the evidence is, we are
3 uncertain about the impact on those species and we
4 would say there may not be a need to impose expensive
5 restrictions on companies and until we have more
6 certainty about it, we won't impose those
7 prescriptions.

8 Q. Well, I am hesitant to get into the
9 discussion we had about the red-shouldered hawk, Dr.
10 Euler, but I thought we had agreed that it would be
11 desirable to implement that kind of a program just in
12 case you're wrong?

13 A. Yes, and we are right back into it.
14 What do you do just in case you are wrong? How much do
15 you spend just in case you are wrong? How much
16 assurance do you have to have before you undertake an
17 activity?

18 It is a dilemma. As Ms. Koven pointed
19 out, we are constantly receiving criticism from both
20 sides of that issue and we are trying to skate between
21 the two positions as carefully as we can.

22 MR. MARTEL: It's thin ice.

23 DR. EULER: Well, sure. I mean, the fact
24 is, there is a great deal of uncertainty about these
25 problems and we are moving as fast as we can with the

1 kind of structure we have to reduce that uncertainty,
2 but it takes a lot of hard work to reduce it.

3 MR. MARTEL: I said you were skating on
4 thin ice, Dr. Euler.

5 DR. EULER: Yes, I know, I heard you. Of
6 course we are skating on thin ice. I mean, this is
7 tough stuff and trying to make a measured and
8 reasonable decision in the face of the need to be
9 reasonable and protective versus the need to not impose
10 excessive cost is a very difficult set of decisions.

11 You see, remember now we are talking here
12 about uncertainty about, for example, area-sensitive
13 species. We have no evidence that they are in trouble.
14 Our concern is our level of uncertainty.

15 MR. LINDGREN: Q. And given that level
16 of uncertainty, Dr. Euler, I repeat my question:
17 Wouldn't it be prudent to undertake management measures
18 to ensure that there are no further declines in the
19 population as opposed to merely monitoring the
20 population?

21 DR. EULER: A. See, I think the prudent
22 thing to do is what we are doing and that's put a fair
23 bit of money into addressing that question as carefully
24 as we can, and that's what's in the effectiveness
25 monitoring program, is get out there and reduce that

1 uncertainty as fast as you can, as carefully as you
2 can. I think that's the prudent thing to do.

3 You see, if you look at -- for example,
4 let's take old growth area-sensitive species which are
5 a hot topic. If you look at the evidence in 10 and
6 some of the other evidence that the Ministry has
7 presented, it doesn't appear that there is any shortage
8 of old growth forest in northern Ontario, you see. So
9 based on my understanding of the evidence that was
10 given by my forestry friends, it looks as though right
11 now we have a good supply of old growth forest; in
12 fact, it's a problem we have so much, as I understand
13 it.

14 Now, it is hard to conceive that as of
15 right now, on this day in November at twelve o'clock
16 that we have -- that we are in danger of losing our
17 area-sensitive old growthers, but we are not content to
18 just stop there, we are putting in a pretty
19 comprehensive effectiveness monitoring program to check
20 that out.

21 Q. Well, I would suggest that there is
22 one other action that the Ministry has taken that is
23 relevant here and that is the development of the
24 Woodland Caribou Guidelines, that would address the old
25 growth concerns perhaps of that species; is that

1 correct or not?

2 A. Yes, it would address that issue.

3 Q. My question is: Given that that
4 would be prudent to do for the woodland caribou, would
5 it be prudent to do it for other species of concern
6 rather than merely monitoring the population?

7 A. Well, I think we are doing more than
8 just merely monitoring. You see, we have got the
9 effectiveness -- effects/effectiveness study. See,
10 where we are going to put quite a bit of money into
11 measuring the impact of timber harvest on these species
12 of concern.

13 So we will know - and we are using kind
14 of a fancy phrase here - reduce the uncertainty, but we
15 need to know more about what is happening out there.
16 See, that's our problem, is that we have lack of
17 research on red-shouldered hawks, it just isn't at our
18 fingertips. If we had it, we would take clear decisive
19 action, but the fact is it doesn't exist.

20 Q. But given that understanding --

21 MR. LINDGREN: Sorry to pursue this, Mr.
22 Chairman, but the Ministry has deemed it necessary to
23 produce a memo that indicates that it would be prudent
24 to follow these recommendations and these
25 recommendations are an interim measure only.

1 Q. I am asking you again: Would it be
2 adviseable to implement similar interim measures for
3 other species of concern?

4 DR. EULER: A. Well, I don't think we
5 need to do so at this time.

6 Q. Thank you.

7 THE CHAIRMAN: Is this a convenient time
8 for the lunch break?

9 MR. LINDGREN: Yes, it is, Mr. Chairman.

10 THE CHAIRMAN: Very well. We will return
11 at 1:45.

12 ---Luncheon recess taken at 12:15 p.m.

13 ---On resuming at 1:55 p.m.

14 THE CHAIRMAN: Thank you. Be seated,
15 please.

16 MR. LINDGREN: Thank you, Mr. Chairman.

17 Q. Dr. Euler, before I proceed, I do
18 have one clean-up question to ask of you. Just before
19 we broke this morning you were speaking of the lack of
20 data on the red-shouldered hawk and how certain
21 uncertainties flow from that.

22 My question to you, Dr. Euler, is this:
23 Does that lack of data typify the situation with
24 respect to other non-game species of concern?

25 DR. EULER: A. Yes, it does.

1 Q. Thank you. Mr. Straight, can I ask
2 you to turn to Table 2 in Document No. 2, that is at
3 page 445 and, in particular, I would ask you to look at
4 page 448.

5 MR. STRAIGHT: A. Yes, I have it. Mr.
6 Lindgren, perhaps just before you ask me a question,
7 you had asked over the break or at lunch if I would
8 confirm those figures from Table 1 and those numbers.

9 Q. Yes.

10 A. And that dealt with where there was a
11 listing of the 36 effects -- potential effects of
12 timber management activities that were explored during
13 the ESSA exercise and the last column was an attempt to
14 indicate where observations on the potential effect
15 might be possible through local monitoring. And those
16 results should say: yes-12; no-22; one possible, and
17 one special study.

18 Q. Okay, thank you.

19 A. Okay.

20 Q. Do you have page 448 before you?

21 A. Yes, I do.

22 Q. Mr. Straight, the last item on the
23 page, the last resource value on the page is identified
24 as flora and beside that we see a statement that:

25 "Most species likely unaffected or

1 unknown."

2 Then reading across this table provincial
3 guidelines are listed as the mechanism to prevent,
4 minimize or mitigate adverse effects on that resource
5 value.

6 Do I take this to mean, Mr. Straight,
7 that the Ministry has in place a specific guideline to
8 protect flora from the effects of timber management?

9 A. No. The intent in referencing
10 provincial guidelines there was specifically to refer
11 to the fact that in using -- in modifying timber
12 management activities using the existing provincial
13 guidelines, they would provide, or could provide a
14 degree of protection to flora species.

15 Q. Is it the Ministry's intention to
16 produce a specific guidelines for the protection of
17 flora species?

18 A. Not at this time.

19 Q. Mr. Gordon, is this a matter that the
20 stakeholder committee might be expected to make
21 recommendations on; that is, the need or the possible
22 need for a specific flora guideline?

23 MR. GORDON: A. We are -- the intent
24 right now is to have the stakeholder committee deal
25 with the current guidelines and any future guidelines

1 that we develop. We weren't specifically intending to
2 ask them the specific question that you are asking.

3 Q. Okay, thank you. Mr. Straight, can I
4 ask you to refer to Document 942 which are our
5 interrogatories on this matter.

6 MR. STRAIGHT: A. What specific
7 question, Mr. Lindgren?

8 Q. I'm looking at Question No. 50 and,
9 in particular, I'm interested in question (a) and
10 answer (a). Do you have that, Mr. Straight?

11 A. Yes, I do.

12 Q. In question (a) we asked for a list
13 of:

14 "...all scientific studies conducted by
15 or for the MNR that support the
16 proposition that most flora species
17 within the area of the undertaking are
18 likely unaffected by timber management
19 activities."

20 And the answer is that:

21 "There is not a long list of studies that
22 address the issue of how populations of
23 plant species that occur in the area of
24 the undertaking are affected by timber
25 management."

1 Is it fair to say, based on this answer,
2 Mr. Straight, that the MNR has conducted no studies to
3 support that proposition?

4 A. In terms of the type of studies that
5 MNR has or hasn't conducted, I would refer that
6 specific question, if I could, to my friend at my right
7 here, Dr. Euler.

8 Q. Well, Dr. Euler, you have experience
9 in the area of flora?

10 DR. EULER: A. Yes.

11 Q. Then please proceed. Perhaps, Dr.
12 Euler, I can ask you: Did you prepare the response to
13 this interrogatory?

14 A. Yes, I helped with the response, yes.

15 Q. Were you the principal author?

16 A. Yes.

17 Q. Thank you.

18 A. As far as I know MNR has not
19 undertaken any scientific studies that support this
20 proposition.

21 Q. Then the next part of the answer goes
22 on to refer to the Argus Atlas on rare vascular plants
23 in Ontario. And then the answer goes on to state:

24 "A brief review of this document reveals
25 that few rare plants in Ontario occur in

1 the area of the undertaking and those
2 that do tend to live in habitats that are
3 not subject to timber harvest (eg. rocky
4 outcrops and ridges)."

5 Now, stopping right there. Dr. Euler,
6 you may be aware that in Panel 6 we asked a similar
7 interrogatory, it was Question No. 3, and this is found
8 in Exhibit 233. The question was:

9 "Please provide a list of the relatively
10 few species referred to in the
11 sentence..."

12 And the sentence reads as follows:

13 "Relatively few are species of forest
14 habitat in the area of the undertaking."

15 And the answer to that question
16 indicates:

17 "There are 155 species in the area of the
18 undertaking, the list being derived from
19 the Atlas of Rare Vascular Plants of
20 Ontario is currently in preparation and
21 will be sent to you as soon as possible."

22 MR. LINDGREN: Mr. Chairman, we did
23 receive that documentation.

24 Q. Given, Dr. Euler, that there are at
25 least 155 species in the area of the undertaking --

1 that there appear to be at least 155 species of rare
2 plants in the area of the undertaking, I'm unclear as
3 to why the Ministry still takes the position that few
4 rare plants in Ontario occur in the area of the
5 undertaking?

6 DR. EULER: A. Well, it's a relative
7 matter in my view. There are a great many species in
8 the area of the undertaking and it's a relatively small
9 number compared to what is there, if you're just going
10 to count up the species, and then you add that to the
11 fact that most of them don't occur -- most of them
12 don't occur where active timber management occurs.
13 It's a relative matter.

14 Q. Would you agree that there is at
15 least a possibility that the list of 155 species is
16 incomplete, there may in fact be more species?

17 A. There is at least a possibility of
18 that, yes.

19 Q. Are you aware if in fact that is the
20 case?

21 A. No, I'm not.

22 Q. In the answer to paragraph (a) there
23 is a further indication that:

24 "There are very few instances where
25 people have brought to the Ministry's

1 attention that a plant species was a
2 concern in a planned timber harvest."

3 THE CHAIRMAN: Is that a question?

4 MR. LINDGREN: I am trying to formulate
5 one here.

6 Q. In the Ministry's reason then -- or
7 in the Ministry's opinion, the reason why few rare
8 species of plants are at risk in the area of the
9 undertaking is that by and large most of them tend to
10 live in habitats that are not subject to timber
11 harvest?

12 DR. EULER: A. Yes.

13 MR. LINDGREN: Now, Mr. Chairman as I
14 just indicated we did pose a similar interrogatory on
15 this question back in Panel 6 and we received basically
16 the same answer. And quite frankly, Mr. Chairman, we
17 are not satisfied with it.

18 THE CHAIRMAN: Deal with it in your own
19 case then.

20 MR. LINDGREN: Well, I think I'm
21 permitted to ask Dr. Euler for a clearer identification
22 of the species that may or may not be at risk in the
23 area of the undertaking as a result of timber
24 management activities.

25 Q. And the Ministry's view, Dr. Euler --

1 THE CHAIRMAN: Just a moment. Would you
2 change your answer previously given? Are you familiar
3 with the answer previously given?

4 DR. EULER: In Panel 6?

5 THE CHAIRMAN: Yes.

6 DR. EULER: Well, I would hate to use the
7 word familiar, I have read it, but it has been some
8 time, Mr. Chairman.

9 THE CHAIRMAN: Well, I guess without
10 going through it, what we are trying to ascertain is
11 if: You are not going to change your previous answer,
12 if you're not going to change the previous answer given
13 by whichever witness gave that answer materially, then
14 we will move on. If you are going to give a different
15 answer on behalf of the Ministry, then we will hear
16 from you.

17 MR. LINDGREN: Well, perhaps in fairness,
18 Mr. Chairman, I could reask the question then and we
19 will see if he can answer, or whether he will answer.

20 Q. The question is this, Dr. Euler: In
21 the Ministry's view, what are the specific species of
22 flora in the area of the undertaking that may be
23 adversely affected by timber management activities?

24 DR. EULER: A. I just can't bring those
25 species right from my memory and list them for you

1 right now.

2 MS. MURPHY: In this interrogatory we
3 have noted at the bottom in answer to this question
4 that this was previously discussed in this
5 interrogatory that is now being referred to, No. 3.

6 It was also the subject of an answer to
7 an undertaking which was, as I recall, a fairly lengthy
8 chart that listed plants and so forth, and that there
9 is also a transcript of evidence on this matter in
10 Volume 56 that deals with it.

11 THE CHAIRMAN: Did that chart and the
12 list of the plants relate to the area of the
13 undertaking?

14 MS. MURPHY: Yes, it did. And my best
15 understanding right now is that the chart was provided
16 to my friend, in fact one page of it was marked as
17 Exhibit 235. But, as I recall, it's a longer chart but
18 I think my friend put in one page at one stage in
19 cross-examination.

20 THE CHAIRMAN: Do you recall that
21 documentation?

22 DR. EULER: Well --

23 THE CHAIRMAN: Not the specifics of it,
24 but do you recall what the documentation contained?

25 DR. EULER: Yes, in a general way, sir.

1 THE CHAIRMAN: And would that contain the
2 list of those rare plants within the area of the
3 undertaking?

4 DR. EULER: Well, I think so.

5 MR. LINDGREN: Mr. Chairman --

6 DR. EULER: I'm not totally sure.

7 MR. LINDGREN: Mr. Chairman, it does list
8 the species of plants that are in the area of the
9 undertaking. There is, as you may recall, a number of
10 columns, this is in Exhibit 235 - I wasn't intending to
11 get into it - this is the one-page extract from this
12 rather lengthy document.

13 There are a number of columns. The far
14 right-hand column is entitled: Reason Species is
15 Assumed not Subject to Timber Management Activity. And
16 as far as we can determine that column is still blank,
17 we have never yet been provided any information that
18 identifies why these particular species are not subject
19 to the effects of timber management.

20 Q. Dr. Euler, given that you are unaware
21 at this point to identify the specific species which
22 are not at risk, can I ask you to --

23 THE CHAIRMAN: Well, isn't it easier to
24 identify the ones at risk. I mean, it would be a much
25 smaller list; would it not?

1 MR. LINDGREN: In fact that was my
2 question to Dr. Euler. Can he produce a list, not at
3 this time, but will he undertake to produce a list of
4 the flora species that the Ministry believes may be at
5 risk in the area of the undertaking as a result of
6 timber management activities.

7 MS. MURPHY: And, Mr. Chairman, I think
8 what we would say is that we have done what we can do
9 and that it will be found by my friend in the answer to
10 the undertaking which was provided on January 31st,
11 1989, and I don't have it here, unfortunately.

12 MR. LINDGREN: I do have the answer to
13 the undertaking. The answer to the undertaking is
14 almost identical to this, in that it does not indicate
15 the specific species of plants that may be at risk as a
16 result of timber management activities.

17 THE CHAIRMAN: All right. Can you go
18 beyond that answer in that undertaking?

19 DR. EULER: Well, you should understand
20 that that's a bit of a time consuming request. The
21 list -- the Argus and White Atlas is a very thick
22 document and would take quite a bit of time. Now, of
23 course we can do it, but it will take some time.

24 MR. LINDGREN: Mr. Chairman, That rough
25 analysis has already been done, Mr. Chairman. In

1 answer to the undertaking we have received a list of
2 155 species, but we have not -- these are the 155
3 species that occur in the area of the undertaking.
4 This is not a list of the rare species that may be at
5 risk due to timber management activities.

6 The basic leg work has been done in my
7 submission, Mr. Chairman. I think basically we could
8 are just ask -- this undertaking could be completed by
9 having the far right-hand column in this document
10 completed.

11 MS. BLASTORAH: Mr. Chairman, if I could
12 deal with this matter because I don't believe Ms.
13 Murphy was here in Panel 6.

14 My recollection - and again I don't have
15 a copy of the undertaking either - my recollection is
16 that Forests for Tomorrow were provided with this
17 fairly extensive chart and during the evidence of Panel
18 6 it was explained what the reasons for having that
19 right-hand column was, the column is entitled: Reason
20 Species is Assumed not Subject to Timber Management.
21 There was extensive cross-examination on that during
22 Panel 6 and Mr. Kenrick gave an extensive series of
23 answers in relation to that.

24 An undertaking was given to provide what
25 information we were able to within reasonable efforts

1 to fill that column in for rare species occurring in
2 forest habitats in the area of the undertaking.

3 A response to that undertaking was given
4 and we heard nothing back with regard to that response
5 since Panel 6, at least not that I am aware of, and
6 basically the nature of the response was that wherever
7 rare species -- or rare, or I believe, endangered
8 species - I don't recall the exact wording - but
9 basically the substance of the answer was, if they are
10 in forest habitats, they are at risk.

11 And beyond that, I don't know exactly
12 what Mr. Lindgren wants. But essentially he asked
13 exactly the same question -- or Mr. Castrilli rather,
14 in fairness, asked the same question in Panel 6 and an
15 answer to that very undertaking was given at that time
16 and until today I had no reason to believe that that
17 answer was not satisfactory.

18 THE CHAIRMAN: I take it, Dr. Euler, you
19 don't know whether those plants are physically located
20 within areas that are going to be subject to forest
21 management activities, or if you did, they would be
22 considered at risk; is that...

23 DR. EULER: Yes. If a rare plant is in
24 the area where timber harvest is going to take place,
25 and we know that, yes, then we would take some action

1 to deal with it.

2 THE CHAIRMAN: But you do not know that
3 there are any of those 155 species that are in fact in
4 areas on which you are planning to undertake timber
5 management activities?

6 DR. EULER: Well, in a few cases we might
7 know of a few; most of the time we don't.

8 THE CHAIRMAN: Well, I don't know where
9 we go from here, Mr. Lindgren, but I don't know that
10 it's going to be all that useful to have him go through
11 the list and just indicate to you that there may be
12 some species that, if found, will be at risk.

13 MR. LINDGREN: Q. Two questions, Dr.
14 Euler. First of all, do I understand your previous
15 answer to mean that it's MNR's position that all flora
16 in forest habitats in which timber management occurs
17 may be at risk?

18 DR. EULER: A. What do you mean by 'may
19 be at risk'?

20 Q. Well, if I understand the thrust of
21 this discussion, if the rare vascular plant is found in
22 a forest habitat in which some timber management
23 activity may occur, those rare plants may be at risk.
24 Is that a fair assessment of the evidence to this
25 point?

1 A. Well, I think so. If I understand
2 you correctly, I think so.

3 Q. Well, what point are you not clear
4 about?

5 A. Well, see, it's really hard. The
6 phrase 'at risk' is a difficult phrase to know what you
7 mean. Risk of what? Risk of being extirpated, risk of
8 having the population go down, risk of a local
9 extinction. So that is hard to understand.

10 And then the concept of rare, because I'm
11 not sure that you have always considered rare plants --
12 I mean, are we talking about something that has an
13 official designation of rare as in Argus and White, for
14 example.

15 So I would like to be helpful here, but
16 the implications of your questions are far reaching and
17 it's difficult to answer them unless we have a clear
18 understanding of what they mean.

19 MRS. KOVEN: Dr. Euler, how could you
20 answer that question? Didn't you just say a few
21 minutes ago that the MNR hasn't undertaken any studies
22 to look at how timber management would affect
23 populations of rare plants?

24 DR. EULER: Yes, that's correct. We
25 haven't undertaken any special or scientific studies.

1 See, the way we would deal with it normally is try to
2 find out if a rare plant is in an area of the
3 undertaking and, if it is, if it comes to our
4 attention, take some action.

5 MR. LINDGREN: Q. Dr. Euler, while we
6 are on the topic of rare, can you confirm for me that
7 the definition of rare as used by Argus and White
8 differs from the Ministry of Natural Resources
9 definition of rare, a rare species?

10 DR. EULER: A. It probably does.
11 Although it's been a little while since I have read
12 that definition in Argus and White, but it's very
13 likely that it does differ somewhat.

14 Q. Thank you. Returning to the
15 interrogatory then, Dr. Euler, answer (b) indicates
16 that:

17 "Flora species likely to be affected by
18 timber management activities can be found
19 by consulting the publication cited
20 above."

21 And on to the next -- oh sorry, I'm
22 reading the wrong -- I should be referring to Question
23 13, I apologize for that in the same exhibit.

24 Here in question (b), Dr. Euler, we
25 asked:

1 "Does the MNR intend to carry out similar
2 monitoring for invertebrates, flora or
3 aquatic organisms that may be at risk due
4 to timber management activities? "

5 And then in the answer to question (b)
6 there is an indication that:

7 "The MNR does intend to monitor
8 endangered, threatened and rare
9 invertebrates and flora species that are
10 potentially at risk as a result of timber
11 management."

12 Let me ask you: What is meant by the
13 phrase 'rare' and what is meant by the phrase
14 'potentially at risk'?

15 A. Okay. In the context of this answer
16 'rare' would correspond to the definition that the
17 Ministry uses which has been available to you I think,
18 we have a sheet on that anyway. And then 'at risk' in
19 this setting because of our objective of viable
20 populations, would be a risk of losing viability.

21 Q. That is potentially at risk of losing
22 viability?

23 A. Yes.

24 MR. LINDGREN: Perhaps, Mr. Chairman, it
25 would be advisable just to introduce as the next

1 exhibit the MNR definition of status categories: rare,
2 threatened, endangered, extirpated, and extinct just to
3 clarify any misunderstanding that might arise in this
4 cross-examination.

5 THE CHAIRMAN: It's already on the record
6 though, it's already exhibited as part of another
7 document; is it not?

8 MR. LINDGREN: I believe that it is.
9 Perhaps just distribute it for the purposes of this
10 discussion.

11 THE CHAIRMAN: (nodding affirmatively)

12 MR. HUFF: (handed)

13 MS. BLASTORAH: Mr. Chairman, just for
14 the purposes of the record, since I did indicate that
15 the undertaking I was dealing with earlier had been
16 dealt with in the evidence of Panel 6. I've found the
17 transcript reference and I believe this is Panel 7. I
18 don't have the volume number, but the transcript pages
19 are 9526 to 9528 and I would just refer you
20 specifically to a portion of the testimony of Mr.
21 Beechey in which he said:

22 "And I would hesitate, for example--"

23 This is at page 9528, lines 2 and
24 following:

25 "I would hesitate, for example, for

1 someone to present me a list of the 2,000
2 or so flowering plants that might occur
3 in the area of the undertaking and before
4 a form like this sit down and kick off
5 and read which ones of those might be of
6 certain, and I would suggest that you
7 probably wouldn't get a plant ecologist
8 on the continent that would be prepared
9 to undertake that kind of an exercise
10 within this kind of a setting, it would
11 just require an awful lot of work."

12 Those are the relevant portions of the
13 transcript, and the undertaking I believe is also
14 filed.

15 MR. LINDGREN: Mr. Chairman, I'm unclear
16 why that could not be dealt with in re-examination.

17 Q. Dr. Euler --

18 THE CHAIRMAN: Well, you have got the
19 answer, Mr. Lindgren, and if you want to deal with it
20 further, call your own evidence on it, get in a plant
21 ecologist of your own and put it on the record through
22 your own witness.

23 MR. LINDGREN: Very well, sir.

24 Q. Dr. Euler, in your discussion of the
25 answer to Question 13(b) of the interrogatories you

1 referred to the Ministry definition of rare. And in
2 the document that we just distributed it's indicated
3 that rare species means:

4 "Any indigenous species of fauna or flora
5 that is represented in Ontario by small
6 but relatively stable populations, and/or
7 that sporadically or in a very restricted
8 area of Ontario or at the fringe of its
9 range, and that should be monitored
10 periodically for evidence of a possible
11 decline."

12 Having reviewed this definition, Dr.
13 Euler, which rare flora species will be monitored
14 periodically for evidence of a possible decline?

15 DR. EULER: A. We haven't decided that
16 yet. That is one of the first tasks that our
17 monitoring committee will have to decide.

18 Q. Do you have some candidate species in
19 mind?

20 A. Well, I can probably talk about --
21 there is probably some orchids, some relatively rare
22 orchids that would appear on there. There may be some
23 rare sedges that we may monitor. Those are candidate
24 species.

25 Orchids are the species that usually jump

1 to mind first and the orchid family is a big family and
2 several occur in northern Ontario and I would guess
3 that they would be strong candidates right off the bat.

4 MR. MARTEL: When will we know, Dr.
5 Euler, what those -- when will you make a decision?
6 Have you any idea how long down the pike they are
7 talking about before...

8 DR. EULER: Well, yes, it has to be in
9 the next few months because we have got to get the
10 program underway. We have funding for it and our
11 population monitoring committee has met a couple of
12 times, and we have stakeholders on that committee.

13 So we have, for example, an FON rep and
14 we'll be seeking advice of botanists and plant
15 ecologists to help us make those decisions.

16 MR. MARTEL: Okay.

17 MR. LINDGREN: Q. Can I ask you to
18 return then to question 50(a) of the interrogatories,
19 this is the passage that I read before.

20 In answer (a), the second full paragraph,
21 there is an indication that:

22 "There are very few instances where
23 people have brought to the Ministry's
24 attention that a plant species was a
25 concern in a planned timber harvest."

1 Dr. Euler, is this the reason why rare
2 fauna are not at risk, or rare flora are not at risk
3 because the public is not bringing them to the
4 attention of the Ministry?

5 DR. EULER: A. Oh no.

6 Q. Then why has that statement been made
7 in relation to the question:

8 "Please identify the flora species that
9 are likely to be affected?"

10 A. I am sorry, I'm confused. What is it
11 that you want me to answer?

12 Q. There is a statement in the first
13 part of the paragraph that:

14 "A review of Argus and White reveals
15 that few rare plants occur in the area of
16 the undertaking and those that do occur
17 in the area of the undertaking tend to
18 live in habitats that are not subject to
19 timber harvest."

20 I take that, it's a statement that some
21 of the reason or rationale for the Ministry's view that
22 most rare species are not at risk. And then the next
23 part of the paragraph there's a statement:

24 "There are very few instances where
25 people have brought to the Ministry's

1 attention that a plant species was a
2 concern in a planned timber harvest."

3 My question was: Is this the reason why
4 flora species are not at risk?

5 A. See, there are two ways the Ministry
6 gets information, the first way is through the
7 literature, through scientific studies and Argus and
8 White represent that source of information; the second
9 source of information is people who tell us things.

10 So what I'm saying is, we've had very
11 little information that would suggest that there are
12 problems in this area and in the absence of this
13 information, we just have to conclude that the risk
14 is -- that our rare species are going to be made
15 non-viable because of timber management is relatively
16 low.

17 Now, maybe I don't quite understand what
18 you are saying and maybe I didn't answer that clearly.

19 Q. Well, perhaps we can address this
20 misunderstanding by looking at an actual example where
21 a rare species was apparently brought to the attention
22 of the Ministry of Natural Resources.

23 MR. LINDGREN: And in that regard, Mr.
24 Chairman, I would like to file as the next exhibit a
25 letter dated September 29th, 1989 from the District

1 Manager Kenora District, Ministry of Natural Resources
2 to Dr. Ross Henderson.

3 MR. HUFF: (handed)

4 THE CHAIRMAN: Exhibit 947.

5 MS. BLASTORAH: I believe that is 948,
6 Mr. Chairman.

7 THE CHAIRMAN: That's right, sorry.

8 MR. CASSIDY: We are about there, Mr.
9 Chairman.

10 ---EXHIBIT NO. 948: Letter from District Manager,
11 Kenora District, MNR to Dr. Ross
12 Henderson, dated September 29,
1989.

13 MR. LINDGREN: Q. Dr. Euler, can I ask
14 you to turn to page 2 of that exhibit. And just to
15 paraphrase that first paragraph, there was apparently a
16 concern of Dr. Henderson that there were rare orchids
17 present in the proposed cut area and that these were
18 brought to the attention of the district office.

19 Now, the second line of that paragraph
20 indicates that:

21 "The Ministry's query to our regional
22 office revealed that none of the plants
23 in question were rare or sensitive since
24 they were not on the Ontario Endangered
25 Species List or the Manitoba Endangered

1 Species List."

2 Now, stopping right there. Dr. Euler, is
3 it the Ministry's position that a species is only rare
4 if it's on the endangered species list?

5 DR. EULER: A. No, no, and this is in
6 error.

7 Q. I am sorry, the MNR's response in
8 this exhibit is in error; is that what you are saying?

9 A. Yes. I'm saying that it's an error.
10 That simply is an error.

11 THE CHAIRMAN: That statement is not
12 true?

13 DR. EULER: Yes.

14 THE CHAIRMAN: Right.

15 MR. LINDGREN: Q. So then, I take it
16 then that --

17 DR. EULER: A. The Ontario Endangered
18 Species List is a very specific piece of statutory
19 legislation and it lists the species of animals and
20 plants, okay, and so one can't conclude that because
21 something is not on this list it is not rare. Sorry
22 about the double negatives there.

23 Q. Thank you.

24 A. It's just simply an error in fact and
25 an error was made in that particular sentence. And I

1 mean, I can't saying anything else because it's simply
2 an error. Someone made a mistake.

3 Now, you see, our people in the field are
4 faced with a very difficult problem and they were -- as
5 you can see in that next sentence, they were concerned
6 about this so they called the Botany Division of the
7 National Museum of Natural Science and somebody at that
8 museum confirmed this.

9 Q. Well, perhaps -- we don't know what
10 was confirmed, it is possible it was confirmed that
11 these species were not o the endangered species list?

12 A. That's right. That's maybe what they
13 confirmed, or maybe they confirmed that they weren't
14 rare. We are just not sure what they confirmed. This
15 may have caused some confusion, and it sure has.

16 THE CHAIRMAN: Okay. Notwithstanding
17 that, if you go to the next paragraph, would the
18 solution -- even if you concluded if the answer was
19 that it's rare or it's considered to be rare, be the
20 same? Would it be dealt with in an area of concern
21 planning process?

22 DR. EULER: Can I just read the
23 paragraph, sir.

24 THE CHAIRMAN: Yes.

25 DR. EULER: Oh yes, sir, yes.

1 THE CHAIRMAN: So the response would be
2 identical if Mr. Pyzer replied correctly in that top
3 paragraph?

4 DR. EULER: Well, I believe so. I mean,
5 that is the way you would deal with it, you would
6 develop an area of concern and an area of concern
7 planning, and then all the compliance monitoring and
8 the whole process.

9 MR. LINDGREN: Q. Dr. Euler, Mr. Pyzer
10 then actually lists the species of concern in that
11 particular instance.

12 Can you confirm for me that --

13 MS. MURPHY: Excuse me, let's not
14 misinterpret the letter. The letter speaks for itself
15 and I don't think, from my reading of this letter, he's
16 listing the species of concern. He's saying that he
17 had checked with the Botany Division of the National
18 Museum of Natural Sciences and they have stated that:

19 "...an international treaty prohibiting
20 trade in orchids does exist. This may
21 have caused some confusion as to the
22 rarity of the following plants."

23 It appears that this list is referring to
24 that sentence.

25 MR. LINDGREN: Mr. Chairman, these are in

1 fact the very plants, the existence of these plants
2 that Dr. Henderson brought to the attention of the
3 district. I'm prepared to file the letter that
4 prompted this response, if Ms. Murphy thinks that is
5 appropriate or necessary.

6 THE CHAIRMAN: Okay. Well, without going
7 too much further, because Mr. Pyzer is not here and we
8 are trying to interpret what his response was, Dr.
9 Euler has indicated that he misspoke himself in
10 paragraph (ii) as to whether the list of plants brought
11 to his attention by Dr. Henderson were in fact rare,
12 okay.

13 We have ascertained from Dr. Euler that
14 notwithstanding the error in categorizing them, those
15 plants would nevertheless be treated in the same
16 fashion under area of concern considerations. Is that
17 not what the second paragraph says?

18 DR. EULER: Yes, sir, that's correct.

19 THE CHAIRMAN: And it refers to the
20 plants -- it talks about 'these plants', which we
21 assume means the list of plants above or the list of
22 plants submitted by Dr. Henderson in the first
23 instance. Is that not the case?

24 MR. LINDGREN: That is the case.

25 Q. Dr. Euler, I take it that you have

1 some familiarity with these species of plants?

2 DR. EULER: A. Well, let me -- what do
3 you mean by 'some familiarity'?

4 Q. Well, perhaps I can focus my question
5 in this way, sir: Can you confirm for me that the
6 Greater Rattlesnake Plantain species which is referred
7 to as item No. 3, can you confirm for me that that
8 species is not known between Saskatchewan and Lake
9 Superior?

10 A. No, I can't confirm that just from
11 memory.

12 Q. Will you undertake to make the
13 enquiries and advise me?

14 THE CHAIRMAN: What is the relevance of
15 that?

16 MR. LINDGREN: The relevance, sir, is
17 this: Assuming that this plant has been properly
18 identified at first instance, this may well be a
19 significant range extension of a species in question,
20 and that is the question I want to put to Dr. Euler.

21 THE CHAIRMAN: Okay. Mr. Lindgren, just
22 a moment. I want to make sure that we are all on the
23 same wavelength, or this examination is not going to
24 get very far in this area; and, that is, whether or not
25 it's rare, if it's endangered -- on the endangered

1 list, I take it there is statutory ways of dealing with
2 it, there is statutory prescriptions in effect to deal
3 with it.

4 DR. EULER: (nodding affirmatively)

5 THE CHAIRMAN: If it is rare, under your
6 definition, the Ministry's definition of rare, then it
7 will be dealt with under an area of concern planning
8 process.

9 DR. EULER: Yes, Mr. Chairman, that's
10 correct.

11 THE CHAIRMAN: If it is not rare, it is
12 common, it won't necessarily be dealt with under an
13 area of concern planning process.

14 DR. EULER: Yes, that's correct.

15 THE CHAIRMAN: And that is the sole --
16 and I'm asking this as a question: Is that the sole
17 ramifications that we are to draw from the various
18 categories of whether it's endangered, rare or
19 non-rare, common?

20 DR. EULER: Yes, Mr. Chairman, that is
21 correct.

22 THE CHAIRMAN: Okay. And, therefore,
23 where it occurs in terms of whether or not there are
24 planned timber management activities will determine in
25 effect how it's handled.

1 MR. EULER: Yes, sir,

2 THE CHAIRMAN: Is that correct?

3 DR. EULER: Yes, sir.

4 THE CHAIRMAN: So the fact that a
5 particular plant doesn't occur between the Saskatchewan
6 border and Lake Superior or whatever geographic area
7 you just referred to, does that matter?

8 DR. EULER: Well, no, sir, not in my
9 opinion.

10 MR. LINDGREN: Q. Dr. Euler, in your
11 opinion are any of these five species rare?

12 DR. EULER: A. I don't want to just say
13 that glibly off the top of my head. There is a couple
14 of thousand plants in the area of the undertaking, 155
15 of them are in some category and you just don't carry
16 that in your head.

17 For me the fact that Dr. Henderson
18 identified a concern about them is enough to put them
19 into the planning process at the area of concern and
20 develop some solutions about how to deal with his
21 concern.

22 THE CHAIRMAN: And so the fact he
23 identified them in his mind as being rare or of
24 concern, would that automatically trigger in the
25 Ministry's view how it would be dealt with?

1 DR. EULER: Sure, I believe it would.

2 THE CHAIRMAN: Is that the response of
3 Mr. Pyzer in effect?

4 MR. EULER: I believe so, sir, yes.

5 MRS. KOVEN: Excuse me, I think -- I just
6 read this quickly, but isn't Mr. Pyzer talking about an
7 area of concern for reasons of the guidelines for
8 fisheries and water quality as opposed to an area of
9 concern specifically to protect those species?

10 DR. EULER: It looks like he is, yes.

11 MRS. KOVEN: So in fact they are being
12 afforded protection through another means?

13 DR. EULER: Yes, and it was unnecessary
14 to take any extra steps.

15 MRS. KOVEN: I guess the question is: If
16 they were not going to employ the fisheries guidelines,
17 what would have happened to the flora in that case?

18 DR. EULER: Well, I think that some
19 prescription would have been developed to carry out the
20 protection that was needed.

21 THE CHAIRMAN: Through an area of concern
22 planning process?

23 DR. EULER: Yes, through an area of
24 concern planning process, that's right.

25 THE CHAIRMAN: Now, is that not the gist

1 of what we are doing here?

2 MR. LINDGREN: That is not my reading of
3 this document, Mr. Chairman. When I look at the last
4 sentence of paragraph No. 2, there is an indication
5 that:

6 "As the forest is regenerated and again
7 evolves through its various complex
8 ecological stages we would expect that
9 such plants would again re-establish
10 themselves."

11 THE CHAIRMAN: So what?

12 MR. LINDGREN: It sounds like they are in
13 an area not protected by an area of concern but, in
14 fact, are in an area of operations.

15 THE CHAIRMAN: But he just says above
16 that:

17 "We are of the opinion that the "Areas of
18 Concern" as required by existing
19 environmental protection guidelines and
20 the aesthetic skyline reserves as shown
21 on the attached map will provide the
22 necessary protection for these plants
23 within your immediate area."

24 Is that not what he said?

25 MR. LINDGREN: That's correct, he did say

1 that; although, there are two points to be made here,
2 Mr. Chairman. He does not indicate that the plants
3 themselves are in the areas of concern; secondly, areas
4 of concern themselves can be harvested.

5 THE CHAIRMAN: But Dr. Euler indicated if
6 it's brought to their attention and there's a concern
7 expressed about it or it falls within the category that
8 the Ministry itself considers rare, it will be dealt
9 with under the area of concern planning process, and
10 presumably a specific prescription will be established
11 for the location of that plant.

12 Is that basically your position?

13 DR. EULER: Yes, sir.

14 THE CHAIRMAN: Or rather the Ministry's
15 position?

16 DR. EULER: Yes, sir, that is the
17 position.

18 MR. LINDGREN: I intend to wrap this up
19 very shortly, Mr. Chairman.

20 Q. Can I ask you a more general question
21 then. When the Ministry does receive a report of a
22 rare species of plants, will the Ministry in fact carry
23 out a field survey or an inventory to corroborate or
24 verify the identification?

25 DR. EULER: A. I'm going to pass that

1 someone who has more familiarity with the forest
2 management planning process because that is where that
3 would happen, and I think someone with more familiarity
4 with that process could probably answer that a bit
5 better than I can.

6 MR. GORDON: A. I have never come across
7 the situation in my experience, but I think I will try
8 apply some common sense here. If we do get such a
9 report and we feel it is necessary to corroborate it;
10 then we will do so.

11 If we are willing to go on the
12 information that is in the report and let it stand on
13 its own, then it's not necessary for us to do that. We
14 will do what is required.

15 THE CHAIRMAN: For example, if a
16 recognized botanist wrote into you and said I know of
17 specific plants in a specific area and it looks like
18 you are going to possibly harvest there or conduct
19 other forest management activity, would you always feel
20 it necessary to go out and check it, or would you rely,
21 if you felt that this person was credible a expert in
22 the area, on his advice, as an example?

23 MR. GORDON: To a large degree we would
24 rely on that person's reputation, therefore, it may not
25 be necessary to go out and check.

1 THE CHAIRMAN: But you would apply the
2 area of concern planning process to it?

3 MR. GORDON: That's right.

4 MR. LINDGREN: Q. Is that when the
5 identification has been verified?

6 MR. GORDON: A. You would have to make a
7 judgment call as to whether or not you thought at the
8 local level it was necessary for MNR staff to go out
9 and verify it. If you made the judgment that it was
10 necessary to go out and verify it, then after you
11 verify it, you would then label it as an area of
12 concern.

13 If you made the decision at the local
14 level to go with the information provided by the
15 individual reporting it because of that individual's
16 reputation or whatever, then it wouldn't be necessary
17 to go out and verify it and, therefore, you would just
18 go straight ahead and make it an area of concern.

19 Q. Let's deal with the likelihood, if
20 any, that such rare plants may be identified up front
21 in the planning process and then put on the values map
22 and protected as an AOC. In this respect, I would like
23 to refer to Volume '87 Of the transcript, page 14605.

24 There was a question that was put to Mr.
25 Hynard by Ms. Swenarchuk.

1 A. Page number again, please?

2 Q. 14605, at line 4, the question is:

3 "But you agree that it's not normal

4 practice for someone qualified in

5 identification of rare, threatened or

6 endangered plants to examine an area

7 planned for harvest for the

8 identification of the plants beforehand?"

9 The answer:

10 "I'm not even sure how such a person

11 could do an inventory like that."

12 Question:

13 "Well, if you could just answer the

14 question. It's not the practice?"

15 Answer:

16 "No, it's not."

17 I take that, Mr. Gordon, to mean that

18 it's not standard practice for the Ministry to go out

19 in the field to attempt to inventory these rare species

20 of plants and, in fact, the Ministry relies upon

21 members of the public to bring the existence of these

22 plants to the attention of the local district; is that

23 the case?

24 MR. GORDON: A. It's not MNR standard

25 practice to carry out such an inventory.

1 Q. Thank you. Mr. Cary, perhaps I can
2 start with you and I'm going to be spending a few
3 moments on Document No. 1, compliance monitoring.

4 Can I ask you to obtain a copy of Exhibit
5 928B which is correspondence relating to the
6 interrogatories for this panel that was filed by the
7 Ministry, Exhibit 928B.

8 Have you got the document, Mr. Cary?

9 MR. CARY: A. Not yet.

10 Q. While you are looking, Mr. Cary, I
11 would ask you to obtain a copy of Exhibit 928A. These
12 were exhibits that I advised counsel I would be
13 referring to this afternoon.

14 MS. BLASTORAH: Perhaps we could just
15 clarify for the witnesses. These are interrogatories I
16 believe that were filed by us; is that correct?

17 MR. LINDGREN: This is correspondence
18 filed by the Ministry and given the Exhibit No. 928B.

19 MS. BLASTORAH: In relation to
20 interrogatories I believe; was it not?

21 MR. LINDGREN: Interrogatories and
22 undertakings.

23 Q. Well, perhaps -- can I ask you to
24 turn to the letter dated March 13th, 1989 from Ms.
25 Murphy to Ms. Swenarchuk.

1 MR. CARY: A. I have got that now.

2 Q. Okay. Can I direct your attention to
3 Question No. 1 which reads:

4 "You have indicated that there is no
5 system which reports only environmental
6 damage. Is there any audit process which
7 is specifically concerned with the
8 identification of environmental damage
9 resulting from timber management
10 activities?"

11 And the answer, Mr. Cary, is:

12 "There is no formal audit process in
13 place in use by OMNR that is specifically
14 concerned with the identification of
15 environmental damage resulting from
16 timber management activities."

17 And then it goes on, however, to indicate
18 that:

19 "Timber harvesting management activities
20 are monitored in various ways and for
21 various purposes."

22 And then at the bottom of the page there
23 is an indication that:

24 "The newly proposed area inspection
25 report is designed to monitor timber

1 management activities in a more formal
2 way from an environmental perspective."

3 We are quite concerned about the types of
4 environmental damage that may or may not be caught
5 under the area inspection process, Mr. Cary. And in
6 this regard we posed a question -- an interrogatory on
7 this subject, Question No. 16 which is found in Exhibit
8 928A. In paragraph (b) we asked:

9 "Please describe in more specific detail
10 how the MNR determines that harvest
11 operations and practices have protected
12 the site so that renewal efforts will be
13 efficient and effective?"

14 The MNR answer to that question is found
15 at the bottom. There is an indication that:

16 "The cut inspections and in the future
17 area inspections reveal the post-cut
18 condition of harvested sites. If the
19 integrity of the site has been maintained
20 following harvest so that the proposed
21 silvicultural prescription may be
22 implemented as planned, it can be said
23 that the harvesting operations and
24 practices afforded adequate site
25 protection."

1 Mr. Cary, by site integrity, do you mean
2 productivity -- site productivity?

3 A. I'm going to give that question over
4 to Mr. Gordon who talks about that point specifically
5 in his evidence.

6 Q. Very well.

7 MR. GORDON: A. First of all, I wrote
8 the answer to 16(b) and if you recall in the lead
9 evidence I talked about site integrity and what I was
10 talking and discussing there was monitoring through the
11 area inspection and noting whether such things as
12 rutting, compaction, excessive bulldozing or local
13 ponding were taking place.

14 Q. My question, Mr. Cary was: Does site
15 integrity mean site productivity?

16 MR. GORDON: A. Not directly, no.

17 Q. Would you agree with me that the area
18 inspection process is not capable of identifying or
19 assessing adverse impacts on the long-term site
20 productivity post-harvest?

21 A. If you will just give me a moment, we
22 had an interrogatory in this area. I would just like
23 to try to find it.

24 Q. Are you thinking of Question No. 55?

25 A. I sure hope so. Yes, that's the one.

1 Q. The answer to that interrogatory
2 indicates that:

3 "Where site damage is observed which may
4 impact on the effectiveness of renewal
5 operations, this will be noted on the
6 area inspection report. Should the
7 inspector wish to make the inference that
8 this may impact on long-term site
9 productivity, the inspector may record
10 this also. It should be recognized that
11 it would be rare for someone to be able
12 to draw this inference based on the
13 one-time visual observation immediately
14 after harvest."

15 A. Does that answer your question?

16 Q. Well then, can you confirm for me
17 that the area inspection process is not capable of
18 assessing or identifying long-term damage to site
19 productivity?

20 A. It's not intended to pick that up;
21 however, we would assume that if there was maintenance
22 of site productivity that you wouldn't be negatively
23 impacting on the potential for maintaining long-term
24 productivity.

25 Q. Site productivity is one long-term

1 environmental effect that we are concerned with;
2 another is the maintenance of biological and species
3 diversity. How would that long-term environmental
4 impact be picked up in the area inspection process?

5 A. Biodiversity.

6 Q. Correct?

7 A. The intent of the area inspection is
8 to be a form of compliance monitoring, so it's not
9 intended to measure biodiversity.

10 Q. Then I'm still having a little bit of
11 difficulty. In the answer in the March 13th letter
12 where it's indicated that the new area inspection
13 process is designed to monitor in a more formal way
14 from an environmental perspective, reading that
15 paragraph and the paragraph proceeding it, I take those
16 paragraphs to indicate that the area inspection process
17 somehow will be capable of identifying those kinds of
18 environmental effects.

19 A. I think what is going on here is you
20 have equated environmental damage to long-term
21 productivity and biodiversity, and --

22 Q. Isn't that damage to the environment?

23 A. I agree, I agree. No, I shouldn't
24 say that. We have not -- our answer is not from that
25 perspective, and in no way are we trying to infer that

1 the area inspection process is intended to monitor
2 long-term site productivity and losses in the area of
3 biodiversity. If for some reason we have given you
4 that impression, we did not intend to do that.

5 Q. Thank you. On the point of
6 biological diversity, Dr. Euler, can I ask you: Is
7 there a formal monitoring program or process in place
8 that monitors whether or not biological diversity is
9 being maintained in the area of the undertaking.

10 DR. EULER: A. No, there is not.

11 Q. My next question to you, sir, is
12 this: Should there be such a program?

13 A. Well, the reason I'm hesitating is I
14 have thought a lot about that and the pros and cons of
15 that and, as a biologist, as a professional biologist I
16 would like to see that. I don't know what the cost
17 implications are and I'm not sure if it's a practical
18 matter.

19 Measuring diversity is a very difficult
20 task and there is books and books and books have been
21 written on diversity and what it means, has to be
22 interpreted very carefully; and so, you see, as a
23 person who is interested in the natural world I think I
24 would like to have that kind of information.

25 I can understand that, and other

1 professionals can understand that; whether you can
2 bring that into a practical program of management or
3 not, I'm unsure. I don't -- is that helpful?

4 Q. That is helpful, Dr. Euler. Mr.
5 Cary, can I refer you to page 29 of the witness
6 statement.

7 In the last paragraph on that page there
8 is an indication that:

9 "The results of the area inspections are
10 compiled and documented and will form the
11 basis for reporting on the success of
12 achieving compliance with the harvest and
13 access conditions, silvicultural
14 prescriptions and specifically
15 environmental protection measures in
16 areas of concern."

17 Now, keeping that statement in mind for a
18 moment, can I refer you to Question No. 16 in the
19 interrogatories and, in particular, I'm interested in
20 the answer to Question (c).

21 In the last line in the answer (c) the
22 Ministry states that:

23 "Distinct trends that relate harvesting
24 problems to renewal effectiveness or
25 efficiency will be discussed in the

1 report of past forest operations. This
2 report will be available to the public."

3 If you turn to Interrogatory 15(c), as
4 the answer simply indicates:

5 "It is not MNR's intention to aggregate
6 area inspection reports in the manner
7 described."

8 The question was the one that I put to
9 Mr. Cary earlier this morning:

10 "Is it MNR's intention to aggregate local
11 effects/effectiveness information at the
12 district, regional or provincial level."

13 And the answer was negative.

14 Given that distinct trends that relate
15 harvesting problems to renewal and effectiveness or
16 efficiency, those kinds of trends will be identified
17 and discussed in the report of past forest operations,
18 and yet the Ministry has indicated with respect to the
19 area inspection information there will be no attempt to
20 aggregate the information in those reports to identify
21 distinct district, regional or provincial trends.

22 And my question to you is, why not?

23 MR. CARY: A. Well, if I could just
24 start off by attempting to describe what we mean by our
25 response to 16 (c), is that as a result of monitoring

1 by area inspections and reporting the results of those
2 in Table 4.12.X - and that's part of the report of past
3 forest operations - and accompanying that table will be
4 a discussion, an analysis of some of the trends that
5 were picked up as a result of observations from area
6 inspections, and if there is a trend there, we will
7 incorporate those into the report of past forest
8 operations which is part of the next plan, and we will
9 then adjust some of the prescriptions perhaps to make
10 them more effective.

11 Now, Mr. Gordon may want to add something
12 to that because, again, his bailiwick is the
13 effects/effectiveness.

14 THE CHAIRMAN: No, but, Mr. Cary, just
15 before Mr. Gordon responds, the question was basically:
16 Why are you not going to aggregate the inspection
17 reports, and I think you indicated earlier this morning
18 that you felt that that is not the purpose of the
19 reports and you found, I think, that it would be of
20 little use to do so.

21 I am not sure those were your exact
22 words.

23 MR. CARY: That was my intent.

24 MR. LINDGREN: Q. Well, Mr. Cary, in
25 light of that answer, can I ask you: Would you agree

1 with me that it may be extremely useful to learn, for
2 example, that a certain prescription or environmental
3 protection measure has consistently proven to be
4 successful at the local level as identified through the
5 area inspection process?

6 MR. CARY: A. Yes, it will be very
7 important, and that would be registered in Exhibit
8 4.12.X.

9 Q. I am still having difficulty with
10 that answer. I am not clear why the area inspection
11 reports themselves could not be aggregated and
12 summarized and the results of that summary circulated
13 to other resource managers?

14 A. The area reports are public, as we've
15 said, and they contain information on areas of concern
16 and on normal operating areas and they register
17 compliance with prescriptions.

18 Now, there will be on that report maybe
19 comments and observations. We do not -- the utility of
20 the area inspection reports we feel remain most
21 important at the management unit level in order to
22 complete that table and then contribute to the report
23 of the past operations that may influence your next
24 plan.

25 My question to you would be: How do you

1 want us to aggregate these reports? We can count the
2 number of area inspection reports. I'm not sure quite
3 what you mean by aggregation then. In my sense --

4 THE CHAIRMAN: But won't the information
5 that you get, if there is a trend, say you are using a
6 prescription that is entirely successful, wouldn't that
7 appear or couldn't it appear in the annual report or
8 even the provincial report as a comment if you wanted
9 to do it on that basis?

10 MR. CARY: The annual report of the TMP?

11 THE CHAIRMAN: The state of the forest,
12 sorry, the state of the forest report.

13 MR. CARY: Well, Dr. Osborn did mention
14 in his remarks about the annual provincial report that
15 we would be reporting on areas of concern.

16 THE CHAIRMAN: But in one of those
17 province-wide reports, can you not comment, Dr. Osborn,
18 on trends or things like that that would be of
19 interest?

20 DR. OSBORN: Yes, Mr. Chairman, and that
21 is in fact one of the intents within there. There was
22 a piece within the state of the forest report
23 pertaining to past forest management practices which
24 will be partly a summation of numbers and partly a
25 picking up of just what you've explained as it reflects

1 into better planning for projections.

2 THE CHAIRMAN: So that would be in effect
3 the results of aggregating, although not doing it
4 formally, something that would be gleaned, so to speak,
5 from the various compliance reports from across the
6 province; is that correct?

7 DR. OSBORN: It would be gleaned.
8 Exactly where it would be gleaned from, sir, I am not
9 prepared to run with the words you use, but it would be
10 gleaned and put into that, yes, which is the intent of
11 where I am hearing his question lead to.

12 THE CHAIRMAN: Right. So does that not
13 serve the same purpose, in effect?

14 MR. LINDGREN: I'm not sure that it does,
15 Mr. Chairman. I will be returning to the content of
16 the annual report and the five-year report in a few
17 moments.

18 Q. But my concern with Table 4.12.X is
19 this: The area inspection report information or some
20 of the information will be summarized in the tables, I
21 take it, Mr. Cary?

22 MR. CARY: A. For each area of concern
23 during the five-year --

24 Q. For the areas of concern only, not
25 for areas of normal operations.

1 A. No, you're right, for the area of
2 concern only in Table 4.12.X.

3 Q. And I take it that the actual copies
4 of the area inspection reports will not be appended to
5 that document?

6 A. To Table 4.12.X--

7 Q. That's right.

8 A. --in the report of past forest
9 operations, no, they will be retained on the management
10 unit files.

11 Q. Now, leaving aside the question of
12 the annual report and the five-year report, how is that
13 information conveyed to resource managers in other
14 management units without aggregating it further to the
15 district, regional or provincial level?

16 A. So the experience -- you are saying,
17 the experience on one management unit, how is it
18 transferred to another management unit as a result of
19 the area inspection reporting?

20 Q. That's correct. If the results of
21 the area inspection process for the AOC component are
22 recorded only in Document 4.12.X --

23 A. For each management plan--

24 Q. That's correct.

25 A. --in the area of the undertaking.

1 Q. Is that as far as that information
2 goes?

3 A. No, there might be some
4 inter-district communication, there might be some
5 inter-regional communication about some of the results
6 that may have been gleaned from this information.

7 Q. But there is certainly no formal
8 mechanism to ensure that it's circulated?

9 A. Training and education goes on all
10 the time.

11 MR. MARTEL: Could I ask a question then,
12 Mr. Cary. Would it not be wise - since it is far too
13 much to aggregate, you say, and you are not sure what
14 in fact you would aggregate - if there was some way of
15 putting together, because in fact what you would be
16 trying to do is remedy conditions that were, let's say,
17 a failure; those things that didn't work, and trying to
18 aggregate them, to see if you could find a pattern
19 across the province or something that was a failure and
20 that the Ministry would itself want to change?

21 In other words, there would be no sense
22 in putting things that were successful in or trying to
23 aggregate it, but the things that went amuck in certain
24 areas to determine if in fact that was occurring across
25 a wider part of the area of the undertaking, so that

1 then you could be in a position to say: This don't
2 work, so we have to try a new method to resolve
3 whatever is causing this to occur out there.

4 MR. CARY: Yes. That is getting into
5 effects and effectiveness. Remember, area inspection
6 reports, their primary purpose is compliance
7 monitoring.

8 MR. MARTEL: Yes, but don't forget your
9 program is only -- your programs are fairly
10 restrictive, the study areas, that's what you are
11 talking about?

12 MR. CARY: No, we are talking about all--

13 MR. MARTEL: Okay. But are you still
14 going to report --

15 MR. CARY: --four timber management
16 activities across the area of the undertaking.

17 MR. MARTEL: Okay. But somewhere you are
18 going to have to try to aggregate. I would try to
19 aggregate what is going wrong, not all the things that
20 are going right because they are going right, so why
21 have a lot of paperwork - as you people want to tell us
22 on occasion - but, in fact, trying to get a handle
23 across the area of the undertaking, some way of putting
24 that all together and say: This is going wrong and we
25 have got to make a change, as a guide to yourselves.

1 MR. CARY: Are you talking compliance or
2 effects? And that's my dilemma.

3 MR. GORDON: Maybe I can be of some help,
4 Mr. Martel. I believe we have systems in place to do
5 exactly what you are looking for.

6 MR. MARTEL: Okay.

7 MR. GORDON: And the simple aggregation
8 of information from area inspection reports will not do
9 what you are recommending, nor what I think the counsel
10 is looking for.

11 MR. MARTEL: Okay.

12 MR. GORDON: First of all, in going
13 beyond just the report of what's going on relative to
14 compliance and areas of concern, which is Table 4.12.X,
15 we have I think tried to clearly state that in the
16 report of past forest operations we will summarize
17 significant problems that we identify over the
18 five-year period.

19 Some of those problems may be identified
20 through area inspections, some of them may be
21 identified through technical inspections. I think Mr.
22 Cary talked about those.

23 So, first of all, you will have an
24 aggregation of these problem areas that are considered
25 significant on a management unit by management unit

1 basis, that will be put in the report of past forest
2 operations, the report of past forest operations and
3 the rest of the plan that is being prepared goes
4 through peer review, it goes up to the region,
5 professional foresters there have the opportunity as
6 well as our professionals to read that, glean things
7 from that and, as well, it also goes on to professional
8 foresters in Timber Sales Branch. So there is a
9 mechanism for that information to move forward.

10 As well, as a unit forester, if I
11 identified in my report of past forest operations a
12 problem that I considered significant, besides trying
13 to deal with it myself, if I didn't have that
14 capability, I would bring it to the attention of either
15 my district manager or the regional forester, and
16 either of those two individuals through their technical
17 committees or management committees can move it up the
18 ladder, and if that is happening elsewhere, then we may
19 identify a problem across a significant part of the
20 province.

21 And, as well, the technology development
22 units have a very important role to play in ensuring
23 that where they are learning new things - and I think
24 they are intelligent enough to recognize when there are
25 new things happening in certain parts of the province -

1 they have a responsibility, it is their mandate to
2 ensure that that information gets to other field
3 managers.

4 And then the last thing I can say is, as
5 well, we have a responsibility and we are committed to
6 improving our training programs to ensure where we are
7 learning things in one location that we will pass that
8 information on to others.

9 But the simple aggregation of the area
10 inspection report won't do the job.

11 MR. LINDGREN: Q. It is conceivable, Mr.
12 Gordon, that other parties may suggest revisions to
13 that form that would make it more valuable if it was
14 aggregated?

15 It appears to us, Mr. Gordon --

16 THE CHAIRMAN: Mr. Lindgren, you will
17 have an opportunity in your own case to put in whatever
18 you want.

19 MR. LINDGREN: That's right. And, in
20 fact, Mr. Chairman, I would like to put a couple of
21 additional -- possible amendments to that form that
22 might make it more useful, more valuable to resource
23 managers across the area of the undertaking.

24 It is our position that the Ministry here
25 has an opportunity to collect and collate very

1 important field data that could prove very valuable to
2 other resource managers and, as far as I can determine,
3 there is no formal way of ensuring that those results
4 are summarized and made available to these other
5 managers.

6 THE CHAIRMAN: Well, I think you have got
7 the Ministry's position as to how they view those
8 particular area inspection reports.

9 Your side may have a very different use
10 for those reports and you can put a witness in the box
11 at the appropriate time and indicate how those reports
12 should be used, how they should be aggregated, what use
13 they could be put to, et cetera, but I don't feel it
14 will really help matters to explore this area much
15 further because I think we have clearly on the record
16 the Ministry's position with respect to those reports.

17 MR. LINDGREN: That's correct, Mr.
18 Chairman. Perhaps I can wrap this portion up with one
19 final question.

20 Q. At page 38 of the witness statement,
21 it is not necessary to refer to it, I don't think.
22 Just to paraphrase it, Mr. Gordon, there is a
23 recognition by the Ministry of the various benefits of
24 public disclosure of the monitoring results.

25 Now, given that statement and given your

1 indication yesterday that copies of the area inspection
2 reports will be made available to the companies; Mr.
3 Gordon, would it be reasonable for the Board to
4 require the copies or summaries of the area inspection
5 reports be appended to the annual reports that are
6 available for public inspection?

7 I mean, I am aware that the documents
8 themselves can sit in a district filing cabinet; I am
9 wondering if it might make them more readily accessible
10 if they are appended to the annual reports?

11 MR. GORDON: A. Which annual report are
12 we talking about, the timber --

13 Q. The TMP.

14 A. I don't think it is necessary to do
15 that. Every five years you are going to give a clear
16 summary of any problems we are identifying and they are
17 available on request. Very clearly it is my position
18 and the Ministry's position that we only want to do
19 things like that if it is absolutely necessary, and I
20 have not heard any arguments to date as to why it is
21 necessary to do what you are asking us to do.

22 Q. You haven't heard arguments and I
23 would also respectfully submit you haven't heard
24 evidence yet, but let me suggest to you that it may not
25 be reasonable for a member of the public to wait until

1 that fifth year report?

2 A. And if I'm working in Manitouwadge or
3 wherever and they have participated in the planning
4 process and they have an interest in a specific area of
5 concern, all they have to do is get on the phone and
6 call me up.

7 And if we have carried out an area
8 inspection and they request it, they will get a copy of
9 it and, as well, even if they don't request it, I would
10 probably advise them that we have it and tell them what
11 I have found.

12 Q. And is it not standard practice for
13 all managers to do that?

14 A. I think it would be exceptional for
15 them not to do that.

16 MR. LINDGREN: This maybe an appropriate
17 spot for a break, Mr. Chairman.

18 THE CHAIRMAN: Okay.

19 MR. CASSIDY: Just before we break, could
20 I just raise a small matter, and the reason I am
21 raising it before the break is it may be able to be
22 dealt with during the break.

23 Just before we started this afternoon,
24 Mr. Lindgren passed me some documents which apparently
25 he intends to use in his cross-examination presumably

1 this afternoon and they relate to -- there is a series
2 of four of them. I don't know if he intends to use
3 them all, but each one of them relates to matters that
4 have been dealt with I believe under the Crown Timber
5 Act or various other pieces of legislation involving
6 compliance monitoring.

7 I have no objection to their
8 admissibility per se except that each one of the
9 documents contains the names of both individuals and
10 companies, several of whom are unfamiliar to me, and as
11 much as they are not members of my clients, but in any
12 event, what I would suggest - and since Mr. Lindgren
13 has advised me or informed me that the names are
14 irrelevant to his cross-examination - is that over the
15 course of the break that those names be blacked out
16 throughout the course of the documents.

17 I can advise that, practically speaking,
18 that does not appear to be a difficult matter since
19 they simply form a column of one part of the documents.
20 And I can also advise that I have spoken to Mr.
21 Shibitani and he is certainly agreeable to assisting
22 Mr. Lindgren or Mr. Huff, if they need that assistance,
23 just simply for the purpose of the fact that that
24 information is irrelevant as Mr. Lindgren told me.

25 THE CHAIRMAN: Irrelevant. What are

1 they, a list of people convicted for infractions of the
2 various Acts?

3 MR. CASSIDY: Not only that, or that is
4 some of them, but there are some matters of just
5 warnings and obviously that would be irrelevant as
6 well.

7 Since it is irrelevant to his
8 cross-examination, I don't think that would be a
9 difficulty to have those crossed out since it is of no
10 use to the Board.

11 THE CHAIRMAN: What is the status of the
12 document, is it public?

13 MR. CASSIDY: They appear to be public
14 documents, that's correct.

15 MR. LINDGREN: Mr. Chairman, I might also
16 point out, however, that throughout the course of this
17 hearing we have seen other documentation from the
18 Ministry in which company names have not been blacked
19 out.

20 I agree with my friend's submissions, the
21 names of the companies involved are not really material
22 to this discussion; however, I do think it would be
23 extremely inconvenient and perhaps unreasonable to
24 require that we recopy all the exhibits that we
25 prepared.

1 MR. CASSIDY: No, I am not even
2 suggesting that, sir. I have got an assistant here who
3 is prepared to help with that. It's a simple a matter
4 of taking a black pen and crossing through the names.
5 That's why I am raising it now at the break so it
6 doesn't waste the Board's time doing that.

7 And with respect, I got notice of this
8 about an hour ago and, in the circumstances, I think it
9 is totally unnecessary to have those names before the
10 Board and I fail to see how it would impair his
11 cross-examination in any respects since it is
12 irrelevant. I fail to see how it will assist anyone to
13 have those names in that context.

14 Simple request, sir, which I think can be
15 dealt with in an expeditious fashion.

16 THE CHAIRMAN: Well, the Board doesn't
17 have any particular interest in seeing the names, quite
18 frankly, it is not going to be relevant to your
19 cross-examination.

20 If Mr. Cassidy's assistant is willing to
21 black them out, do you have any real objections, Mr.
22 Lindgren?

23 MR. LINDGREN: Sorry, Mr. Chairman.
24 ---Discussion off the record

25 MR. LINDGREN: I am sorry, I missed the

1 last portion of your statement, Mr. Chairman.

2 THE CHAIRMAN: Do you have any objection
3 if Mr. Cassidy's associate is willing to black them
4 out?

5 MR. LINDGREN: I fail to see why it is
6 necessary to do it, but if the Board feels it's
7 appropriate, I'm certainly prepared to do that. But I
8 haven't heard a compelling reason why it should be
9 done.

10 THE CHAIRMAN: Well, it would be a
11 cooperative gesture; would you not suggest that?

12 MR. LINDGREN: That it might be, Mr.
13 Chairman, and we will do that.

14 MR. CASSIDY: Thank you, sir.

15 THE CHAIRMAN: I mean, if you want us to
16 see the names, then we will see the names, it is a
17 public document.

18 I wouldn't have thought this is the kind
19 of thing that we have to spend ten minutes between the
20 parties trying to sort out. I would hope that counsel
21 can utilize some maturity amongst themselves and decide
22 what matters have to really be put before the Board for
23 so-called adjudication. This is the kind of area that
24 hopefully the two of you can sort out without having to
25 come to the Board about it.

1 MR. LINDGREN: Well, quite frankly, Mr.
2 Chairman, I am taken by surprise that it is necessary
3 to purge public documents of certain information.

4 THE CHAIRMAN: Well...

5 MR. CASSIDY: No, Mr. Chairman, I am not
6 trying to be difficult. I raise this just before the
7 break, I thought it could be dealt with in a
8 cooperative fashion and I just wanted to put my views
9 to the Board and we can work it out.

10 THE CHAIRMAN: Okay. I tell you what, we
11 are going to take a break and you guys can sort it out
12 yourselves.

13 MR. LINDGREN: We will, sir.

14 MR. CASSIDY: Thank you.

15 ---Recess taken at 3:15 p.m.

16 ---On resuming at 3:45 p.m.

17 THE CHAIRMAN: Thank you. Be seated,
18 please.

19 MR. LINDGREN: Q. Mr. Cary, I would like
20 to now deal quickly with the operational audit process.
21 In your evidence you stated that the main office audits
22 are carried out every four years and the regional
23 audits of the districts are carried out once every two
24 to three years. Is that a fair summary of your
25 evidence?

1 MR. CARY: A. That's correct.

2 Q. Now, when I look at term and
3 condition No. 56, which speaks of operational audits, I
4 don't see that frequency expressly spelled out.

5 My question to you is simply this: Would
6 the Ministry have any problems if the Board expressly
7 required this frequency in the term and condition?

8 A. Just a moment while I turn to 56.

9 No, I have no problem with that.

10 Q. Thank you. Can I now ask you to turn
11 to Exhibit 928A, and can I direct your attention to
12 Question No. 3.

13 A. Which interrogatory is it?

14 Q. It is the large package of
15 interrogatories filed by Ms. Murphy.

16 A. That's FF -- that's Forests for
17 Tomorrow No. 3?

18 Q. That's correct, in Exhibit 928A.

19 A. I have that.

20 Q. At the bottom paragraph, Mr. Cary,
21 there is an indication that:

22 "There are no public notices in relation
23 to the

24 conduct of operational audits."

25 Now, given that various stakeholders or

1 stakeholder groups may have relevant information on
2 compliance or non-compliance with policies, guidelines,
3 directives and the like, I am asking you, Mr. Cary,
4 whether it would be reasonable to require a public
5 notice that an operational audit is currently underway
6 and that submissions are invited from the public on
7 that matter?

8 A. Submissions about what?

9 Q. About matters that will be discussed
10 in the operational audit and, as I just generally
11 indicated to you, matters relating to compliance or
12 non-compliance with prescriptions or policies,
13 guidelines and directives?

14 A. As I said in my lead evidence, these
15 are audits conducted by the MNR on a regular basis, the
16 public will be aware or are aware, or could be aware of
17 how frequently they occur in each region once every
18 four years.

19 Q. How is the public aware of that?

20 A. Through our policies and procedures
21 or by request. Any member of the public can find out
22 when they will occur if they request that information.

23 Q. And no formal notice is published?

24 A. No, it isn't. I'm not sure what role
25 the public would play in MNR operational audits. I am

1 just not sure what --

2 Q. If I understand your evidence
3 correctly, Mr. Cary, you have indicated that
4 occasionally the audit team does get into the field to
5 look at field operations as it were?

6 A. Are you talking the main office of
7 region or the region of district?

8 Q. Well, let's deal with them one at a
9 time. Do any members of the main office audit team go
10 into the field?

11 A. Yes, we do.

12 Q. And do any members of the regional
13 audit team go into the field?

14 A. Yes, they do.

15 Q. But they obviously don't have the
16 time to look at everything, so they are only looking at
17 a selective portion of the field operations?

18 A. Yes.

19 Q. And it may be reasonable to expect
20 that stakeholders may have information on which areas
21 should be visited?

22 A. During an audit?

23 Q. Correct, to ensure that there has
24 been compliance with the applicable policies and
25 directions?

1 A. If the stakeholder, if the concerned
2 member of the public wishes to contact the regional
3 director or the district manager to voice concern about
4 a matter at any time, he can certainly -- he or she can
5 certainly do that, and if that was coincident with an
6 audit visit, the audit team might well visit that part
7 or that area.

8 Q. One final question on this matter
9 then, Mr. Cary. Once the audit has been complete and
10 the results are available, is there a public notice
11 issued to that effect; namely, that the audit is
12 complete and available for inspection?

13 A. No, there isn't. But, as we said
14 before, the audit reports are available to the public,
15 but there is no public notice.

16 Q. Can I ask you to turn to the
17 northwest audit which is found within the witness
18 statement. In particular I am interested in pages 76
19 to 77.

20 A. 76 and 77?

21 Q. That's correct.

22 A. I have that.

23 Q. And before I address those particular
24 pages, perhaps by way of an overview, Mr. Cary, would
25 you agree with me that this audit and the

1 recommendations of this audit appear to emphasize the
2 need for better recordkeeping and puts little or no
3 emphasis on management results?

4 A. The recommendations speak to a wide
5 variety of topics and I'd have to canvass all the
6 recommendations to come to that conclusion.

7 Q. Well, we have reviewed the
8 recommendations, Mr. Cary, and that is the conclusion
9 that we have reached. I am wondering perhaps if you
10 can look at the audit and point to any statements that
11 indicate that management objectives are being achieved?

12 A. As I told the Board in lead evidence,
13 the operational audit at both levels is focused on
14 compliance, it is not focused on effects and
15 effectiveness.

16 We attempt in our audit to go, as I said,
17 beyond the bean counting and to provide the audit
18 team -- and the audit team pick up on opportunities to
19 suggest deficiencies and steps that the region or the
20 district should take for their program to become more
21 effective. But it is essentially -- the operational
22 audits essentially are focused on compliance with
23 technical standards, with policies and procedures.

24 Q. As opposed to the achievement or
25 non-achievement of management objectives?

1 A. Well, what sort of management
2 objectives are you talking about?

3 Q. This can include a variety of
4 management objectives, such as the FPPO implementation
5 schedule, the --

6 A. FPPIS implementation schedule?

7 Q. Correct. That's the most broadest
8 perhaps objective that I can think of.

9 A. We go into great - not great - we go
10 into a lot of detail on that particular possible topic,
11 forest -- and each time that main office visits a
12 region there is a thorough review of their performance
13 and we compare that to what was projected to be
14 achieved under the forest production policy
15 implementation schedule.

16 And so in that context, if that's one of
17 your management objectives, then we do indeed look at
18 that and then comment on the achievement.

19 And page 68, Mr. Tworzyanski points out
20 to me, is where we do it or where we did it in the
21 northwest in 1985.

22 Q. When I am referring to management
23 objectives I am also referring to objectives that might
24 be set out in the Strategic Land Use Plan or the DLUG.

25 Mr. Cary, can I ask you this: Is there

1 any monitoring that is proposed or in place to
2 determine whether or not MNR's managing the resource
3 towards these SLUP or DLUG targets or to evaluate
4 whether any progress is made towards these targets?

5 A. Not in the MNR operational -- timber
6 management operational audits.

7 Q. Where else, if any where, would we
8 find that kind of a program?

9 A. I cannot answer that question. I
10 believe that other sections of the Ministry are
11 responsible for monitoring that, but I don't know which
12 ones.

13 Q. Can any other member of the panel be
14 helpful on that question? Mr. Straight?

15 MS. MURPHY: I was about to rise and
16 advise that the whole issue of District Land Use
17 Guidelines and so forth was canvassed in some detail in
18 Panel 1. Of course, that's a long time ago and I am
19 not certain how far they went in discussing the review
20 of them, although I know that they did.

21 I am just concerned that we are getting
22 into another matter where evidence already exists on
23 the record and I am not certain at this stage that the
24 witnesses are being advised what has already been said.

25 THE CHAIRMAN: Well, in any event, it

1 doesn't appear that any of these witnesses can answer
2 that question.

3 MR. LINDGREN: Q. Well, perhaps I will
4 just read perhaps a relevant passage from the
5 Baskerville report and ask for the witnesses' opinion
6 on that, and perhaps we might be able to elicit a
7 response from Mr. Cary or Mr. Straight.

8 This is Exhibit 16, Mr. Cary. Do you
9 have a copy of that before you?

10 MR. CARY: A. No, I don't.

11 MR. LINDGREN: Again, Mr. Chairman, this
12 is an exhibit I had advised I would be using this
13 afternoon.

14 MS. BLASTORAH: I just needed to know
15 which witness was going to require it. (handed)

16 MR. CARY: I have it now.

17 MR. LINDGREN: Q. Can I ask you to,
18 first of all, turn to page 70 and 71. And here there
19 is a discussion of the SLUP and DLUG targets. And on
20 page 71, the last full paragraph, Dean Baskerville
21 writes:

22 "As the objectives of SLUP and DLUG are
23 presently stated, it is not possible
24 either to manage the resource towards
25 them nor to evaluate progress towards

1 them."

2 My question to you, Mr. Cary, is this:

3 Is this still a valid concern and, if not, what are the
4 particulars of any monitoring program that can evaluate
5 progress towards the achievement of these targets?

6 MR. CARY: A. I hope you ask Dr.
7 Baskerville that question.

8 I would have to look at the objectives of
9 SLUP and refresh my memory about the objectives of SLUP
10 and DLUG, and I cannot recall at the moment how they
11 are stated. So unless you give me some examples, I
12 cannot disagree or comment on that statement.

13 Q. When you check that, Mr. Cary - and I
14 am content to leave it at that - when you do make that
15 check, will you undertake to advise me if the Ministry
16 does in fact have a monitoring program that's planned
17 or in place that will measure success in reaching those
18 targets?

19 A. Well, I will undertake to advise what
20 part of the Ministry is given that -- has been given
21 that responsibility.

22 Q. And perhaps --

23 A. I'm not quite sure what particular
24 form of monitoring or how they do that.

25 Q. That's what I am interested in, the

1 particulars of how that is done, assuming some branch
2 or department of the Ministry has been given that
3 responsibility.

4 MS. MURPHY: Can we do this, Mr.
5 Chairman, can we just undertake first of all to have a
6 look at whether this question has been raised and
7 answered previously. I think we should do that first.

8 THE CHAIRMAN: Well, in the event that it
9 is answered in Panel 1, no further answer is required;
10 in the event it isn't answered in Panel 1, Mr. Cary,
11 undertake to at least provide information as to whether
12 or not they do it and, if so, which branch of the
13 Ministry has the responsibility.

14 MR. LINDGREN: And how is that
15 responsibility carried out.

16 THE CHAIRMAN: Well, to the extent you
17 can in a brief answer--

18 MR. CARY: I will undertake to do that,
19 Mr. Chairman.

20 THE CHAIRMAN: --undertake to do it.

21 MR. LINDGREN: Q. Mr. Cary, now can we
22 return to page 76 and 77 of the audit, the northwest
23 audit. At the bottom of page 76 under the heading Wood
24 Measurement, there is a statement that:

25 "The Ministry is required to measure less

1 than 10 per cent of this volume, which
2 means that some 90 per cent of all wood
3 cut is either weighed or scaled by
4 industry."

5 Mr. Cary, is that a standard practice
6 among regions? Is that a fairly accurate or typical
7 ratio of the wood measured by the Ministry as opposed
8 to the wood measured by industry?

9 A. In all honesty, I can't answer that
10 question. I know that's what we found in the
11 northwest. I would have to get back to you on that one
12 too.

13 Q. Dr. Osborn, perhaps you may have some
14 information on this?

15 DR. OSBORN: A. You are asking whether
16 that percentage of 90:10 is typical?

17 Q. Correct.

18 A. Across the other regions it will be
19 similar, it will vary, the northeastern will certainly
20 be different, it will be different in Algonquin, but
21 that ratio is not unusual.

22 Q. Thank you. Now, on page 77, the
23 audit team makes some comments about this scaling
24 process and in fact makes a recommendation to improve
25 this process; and, that is:

1 "The Region must prepare a formal scaling
2 audit program that will ensure all
3 'domestic' companies, or those who are
4 allowed to move Crown timber from the
5 cutting site prior to measurement, will
6 be audited at least once in four years."

7 Dr. Osborn, is that a requirement that's
8 found elsewhere in other regions; namely, that the
9 scaling audits occur at least once every four years?

10 A. As far as I recall, and I don't have
11 the policy and procedure in front of me, that policy
12 and procedure will speak to the frequency of scaling
13 audit across MNR.

14 MR. CARY: A. I have that policy in
15 front of me, Mr. Lindgren, and if I may just read you
16 from it.

17 "All major companies must be audited at
18 least once every five years."

19 So that's the frequency.

20 Q. Thank you. Would you agree with me,
21 Mr. Cary, that this essentially can be characterized as
22 an honour system, and given that there is some
23 infrequency to the scaling audit, that there is a
24 possibility that wood may escape through the system
25 uncounted, unmeasured and unpaid for?

1 A. You are asking the wrong person that
2 question. I know that there are checks and balances
3 all the way through. So I simply cannot answer that
4 question. I have no knowledge that that occurs.

5 Q. Dr. Osborn?

6 DR. OSBORN: A. I wouldn't describe it
7 as an honour system, it is a contractual arrangement.

8 Q. The second part of that question,
9 perhaps the more relevant part of that question, Dr.
10 Osborn, was: Does that contractual arrangement allow
11 for wood to be removed without being paid for?

12 A. The arrangement doesn't allow for it,
13 no.

14 Q. In your experience, has that
15 occurred?

16 A. The circumstances whereby wood has
17 moved and not been paid for?

18 Q. Correct.

19 A. Not in my personal experience, no.

20 Q. Mr. Cary, are you aware of any such
21 experiences?

22 MR. CARY: A. Yes, I am. I have
23 knowledge of some wood that has been moved from the
24 bush without being scaled.

25 THE CHAIRMAN: Mr. Lindgren, is it

1 illegal to do so under the Crown Timber Act?

2 MR. LINDGREN: Perhaps that's a question
3 that Mr. Cary can answer.

4 MR. CARY: That's correct, Mr. Chairman.

5 THE CHAIRMAN: Well, if somebody does it
6 they are breaking the law; aren't they?

7 MR. LINDGREN: That's correct.

8 THE CHAIRMAN: Is that any different from
9 all of us having to abide by the provision, say, of the
10 Criminal Code?

11 MR. LINDGREN: The point here, Mr.
12 Chairman, is that if more frequent or more random
13 scaling audits were in place that sort of situation may
14 be less likely to occur.

15 THE CHAIRMAN: Well, I think there is a
16 presumption; is there not, that people, companies, et
17 cetera, obey the law.

18 That doesn't mean to say that they always
19 do and it doesn't mean to say that there aren't
20 convictions or breaches, but is not the presumption
21 that if there is a law in force that says you shall not
22 do something, that people are expected and obliged to
23 obey the law?

24 MR. LINDGREN: Are you asking me if there
25 is a presumption?

1 THE CHAIRMAN: Well, what I am saying is:
2 We are not yet in a police state where you have to have
3 the forest cop out there making sure that nobody is
4 breaking the law. We do have at least laws in place
5 that say you are not allowed to do something.

6 MR. LINDGREN: Since we are on the
7 subject of infractions, Mr. Chairman, perhaps we can
8 move on to and turn to page 84 of the witness
9 statement.

10 Q. In the fourth full paragraph there is
11 an indication that in Fort Frances the DCL program is
12 larger and even more complex than the program in
13 Dryden.

14 "No technicians are assigned to the
15 Boise-Cascade FMA and cut inspections
16 are carried out by the Unit Forester and
17 infractions of the Crown Timber Act
18 are reported by Company forestry staff."

19 I am somewhat puzzled by that statement,
20 Mr. Cary. Does this mean that no Ministry staff
21 inspects cut-overs for Crown Timber Act violations?

22 MR. CARY: A. No, it says cut
23 inspections carried out by the unit forester. The unit
24 forester is a member of the MNR staff, he conducts --
25 he or she conducts the cut inspections, so indeed they

1 are out there.

2 Q. Is there some sort of formal or
3 informal arrangement between the Ministry and the
4 company that requires the company to report
5 infractions?

6 A. There is an arrangement between the
7 Fort Frances District and the company that if an
8 infraction should take place they report it and indeed
9 they do.

10 Q. Is that an arrangement specific to
11 that district?

12 A. I believe it is, but it may occur
13 elsewhere but simply I don't know if it does.

14 THE CHAIRMAN: Is that, Mr. Lindgren,
15 materially different from the obligation of companies
16 to report spills, environmental spills?

17 MR. LINDGREN: The two may be analogous,
18 Mr. Chairman. The point to be made here is that
19 infractions may be more likely to be reported if there
20 is some vigilance on the part of the regulatory agency
21 responsible.

22 Q. Now, with respect to that paragraph,
23 Mr. Cary, as you know we posed an interrogatory. This
24 is question No. 39, it is found in Exhibit 942. And
25 basically in this question, Mr. Cary, we asked for

1 particulars of the Crown Timber Act infractions
2 reported by company staff to the Fort Frances District
3 Office and that information was provided.

4 Now, the answer indicates that:

5 "In a five-year period, from 1983 to
6 1988,

7 approximately 12 infractions of the Crown
8 Timber

9 Act were reported and various penalties
10 were

11 imposed."

12 Is that correct, Mr. Cary?

13 MR. CARY: A. Exactly 12.

14 Q. When I look at the column: Action
15 Taken, does that mean that that was the only action
16 taken by the Ministry; for example, a penalty may have
17 been imposed but no additional enforcement action was
18 taken in the form of a warning letter or perhaps a
19 charge under some other statute?

20 A. These are infractions to the Crown
21 Timber Act and the Crown Timber Act assesses penalties,
22 and these are the penalties that were assessed on these
23 particular infractions.

24 Q. But other --

25 A. And you will see from February the

1 2nd, 1984, there was additional action taken. I don't
2 know about the word 'replant' but the plant, the area
3 was planted -- the area of concern was planted at
4 company cost. So that would be an example of
5 additional action.

6 But, of course, accompanying the
7 assessment of penalty is a letter to the company
8 informing them of the circumstances and assessing a
9 penalty, but that's the record we've got since October
10 1983 when we enquired of Fort Frances District.

11 Q. Now, in relation to this particular
12 infraction, I note that the substance of the infraction
13 was the unauthorized cutting of 12 hectares outside the
14 approved area and partially within an area of concern
15 and that prompted a penalty of five times stumpage and
16 the requirement that that area of concern be replanted
17 at company cost.

18 I presume then that this dual penalty was
19 intended to act as a deterrent to future infractions?

20 A. That's one of the objectives, yes.

21 Q. And yet can you confirm for me that
22 nine other infractions did in fact occur?

23 A. Yes, that's correct.

24 Q. And just before we leave the February
25 2nd, 1984 incident, we see on the second infraction

1 related to that date, an indication "removal of seized
2 wood". I am not clear on what that means?

3 A. The wood was seized probably by a
4 scaler under license and that means you can't touch it.
5 It was removed and that's an offence.

6 Q. Okay, thank you. Mr. Cary,
7 unauthorized cutting outside an approved area or into
8 an area of concern, is that generally referred to as a
9 trespass?

10 A. That's another term for it.

11 Q. Let's stay with the trespass issue
12 for a moment. And can I ask you to turn to the Terrace
13 Bay District audit and, in particular, can I ask you to
14 turn to page 164 of the witness statement.

15 Now, in paragraph 5 of this page, Mr.
16 Cary, there is an indication that:

17 "One trespass was processed at the
18 Dorothy Lake Block."

19 And I am unclear as to what that means.
20 What does the term 'process' mean? Does that mean
21 simply a penalty was imposed or that a charge was laid
22 or...

23 A. I believe that that means a penalty
24 was assessed.

25 Q. Do you know what that penalty was?

1 A. No, I don't.

2 Q. Do you know how many hectares were
3 cut?

4 A. No, I don't.

5 Q. Okay. Can I ask you to turn to the
6 other other statements in that paragraph. It goes on
7 to read:

8 "Several other areas had trespass
9 infractions such as at Mooseskull and
10 Agonzon Lakes. No penalties were
11 processed in these situations mainly
12 because of a lack of understanding as to
13 the proper reserve locations by the
14 company."

15 Now, Mr. Cary, as you know, we posed an
16 interrogatory on this matter and it is Question No. 45
17 in Exhibit 942, and we asked for the reasons for the
18 company's lack of understanding as to the proper
19 reserve locations.

20 And to paraphrase the answer - and
21 correct me if you disagree - the answer essentially is,
22 that the reserve boundary was changed by the Ministry
23 of Natural Resources and this change was set out in the
24 new annual work schedule and the cut approval; however,
25 the company followed the old reserve boundary because

1 the change had not been communicated to field staff; is
2 that correct?

3 Mr. Cary, is that a correct summary of
4 that answer?

5 A. Yes. The old reserve boundary wasn't
6 changed. There was a reserve boundary out there in the
7 field and that wasn't changed, but the plan was
8 changed. The AWS was changed--

9 Q. I understand that, Mr. Cary.

10 A. --laterally.

11 Q. Now, in the final sentence on that
12 page there is an indication that:

13 "The district was satisfied that the
14 offence was

15 unintentional and recommended that no
16 penalties

17 be applied."

18 And as a matter of enforcement, Mr. Cary,
19 or enforcement policy, I am wondering if that is
20 standard policy and standard procedure; if an
21 infraction is judged to be unintentional, I take it
22 that no penalty would be imposed?

23 A. Each case is judged individually and
24 if the district manager is satisfied that indeed the
25 trespass was unintentional and there were reasons for

1 it, he may make that decision not to go forward with
2 assessing a penalty.

3 THE CHAIRMAN: What would the minimum
4 penalty be in that case anyways, \$50?

5 MR. CARY: In a trespass, it is on the
6 value of wood that's affected. It is either one times
7 or five times stumpage in addition to the stumpage you
8 have to pay in any event. So it would depend on the
9 number of trees that were harvested or knocked over or
10 bulldozed or -- it would depend. It could range from
11 \$50 to a lot of money.

12 MR. LINDGREN: Q. With respect to this
13 Mooseskull trespass, Mr. Cary, are you aware of how
14 many hectares were cut or bulldozed?

15 MR. CARY: A. I'm not. Dave -- Mr.
16 Gordon, are you?

17 MR. GORDON: A. No, I'm not.

18 MR. CARY: A. I was just checking.

19 MR. GORDON: A. But if the Board wants
20 some further information or a description in general
21 terms as to what happened there, I can explain to the
22 Board the situation in the field.

23 MR. LINDGREN: Q. I think the situation
24 has been fairly and straightforwardly presented in the
25 answer to the interrogatory.

1 But if it would not require too much
2 effort, Mr. Gordon, can I ask you to undertake to
3 determine how many hectares were cut in this particular
4 situation?

5 MR. GORDON: A. If the Board feels that
6 that is worthwhile, I will be willing to do that.

7 THE CHAIRMAN: Just a moment. In the
8 particular case we are dealing with, is it in the
9 Minister's discretion as to whether or not to assess a
10 penalty--

11 MR. CARY: Yes, it is.

12 THE CHAIRMAN: --under the Act?

13 MR. CARY: Yes, it is.

14 THE CHAIRMAN: There is no mandatory
15 penalty prescribed in the event of an infraction?

16 MR. CARY: That's correct.

17 THE CHAIRMAN: And obviously if the
18 district sets out the facts for the Minister in terms
19 of saying: There was an infraction, here's the reasons
20 or the fact-setting situation involving this
21 infraction, and the Minister decides to assess in a
22 particular case no penalty; is that unusual, is that an
23 unusual way to proceed under this Act?

24 MR. CARY: It is not unusual, it is case
25 by case.

1 THE CHAIRMAN: It is case by case?

2 MR. CARY: Case by base.

3 MR. LINDGREN: Q. Mr. Cary, do I
4 understand you to say that the Minister is responsible
5 for decisions as to whether or not to impose trespass
6 penalties?

7 MR. CARY: A. No, that power is
8 delegated.

9 Q. Delegated to whom?

10 A. To all sorts of people, and I think
11 that has been spoken to in evidence before, but it is
12 delegated to the director of Timber Sales Branch - and
13 that's changed its name - to the regional directors and
14 to the district managers, depending on the nature I
15 think and the size of the penalty or the potential
16 penalty that's involved.

17 Q. It is also within that designates
18 discretion?

19 A. Yes.

20 Q. And I am simply interested in how
21 that discretion is exercised and whether or not it is
22 structured?

23 A. There is a strict structure to that.

24 Q. And perhaps you can advise me very
25 briefly what that is?

1 A. Oh, I can't. I don't know the
2 details, but it is laid out in policy and procedure
3 very carefully.

4 Q. Has that policy or procedure been
5 presented to this Board?

6 MS. MURPHY: I can't recall.

7 THE CHAIRMAN: Ms. Murphy, where is the
8 statutory authority for the delegation?

9 As I read the Act - I may be wrong - but
10 Section 48(2) seems to indicate the Minister has the
11 authority to assess the penalty and the regulations, at
12 least I just glanced through them, do not seem to
13 indicate he has the power to delegate.

14 Where does he get that authority?

15 MS. MURPHY: Well, I haven't looked
16 through closely, but I think it would just flow from
17 all the normal interpretation of statute that the
18 Minister has numbers of authorities like, for example
19 in this statute, the authority to give cutting
20 approvals of which there are thousands every year.

21 So for each one of those it is set out in
22 a particular policy and there is a formal actual
23 delegation by the Minister to specific people for
24 specific purposes and it is done formally in writing.
25 I am not sure if it is done by Order-in-Council, I

1 would have do determine that.

2 THE CHAIRMAN: Well, I am not saying you
3 are wrong, but I would think - it has been a while, I
4 think, since I looked into this question - but I think
5 there has to be some kind of formal regulation,
6 Order-in-Council or some authority for a Minister to
7 delegate his powers if the Act doesn't specifically
8 allude to a delegation.

9 MS. MURPHY: Could I just undertake to
10 find out what the situation is with this particular
11 legislation. That will probably be faster then my
12 trying to deal with it here.

13 THE CHAIRMAN: Okay.

14 MR. LINDGREN: Q. Mr. Cary, you just
15 referred a moment ago to a policy that speaks to this
16 issue, the issue of imposing penalties for trespasses.
17 And I was unclear from Ms. Murphy's answer as to
18 whether or not that policy has been presented to this
19 Board for review.

20 Will you undertake to determine if it has
21 been presented? I don't recall quite frankly. If it
22 hasn't, will you undertake to provide a copy of that
23 policy or procedure?

24 MR. CARY: A. What are you talking --
25 are you talking about the delegation powers?

1 Q. No, I am speaking of the discretion
2 of the district manager or the regional director to
3 impose penalties for trespasses under the Crown Timber
4 Act.

5 MS. MURPHY: Mr. Chairman, just let me
6 say, what we will do is look at whether that particular
7 document has already been made an exhibit and, if it
8 hasn't, we will.

9 We have made available lists of all of
10 the policies and so on and so forth, and which ones
11 have been made exhibits to date and provided in various
12 ways, I just can't recall off the top of my head. I
13 will let you know.

14 MR. LINDGREN: And, Mr. Chairman, if and
15 when that policy is provided to the Board and to the
16 parties, I would like to reserve my rights to pose
17 questions on that.

18 MS. MURPHY: On what?

19 MR. LINDGREN: On the policy.

20 Q. Now, Mr. Cary, continuing with the
21 interrogatory. The second trespass matter that is
22 referred to at page 164 of the witness statement, you
23 see the Agonzon Lake matter, and in its answer to this
24 interrogatory the Ministry has attached some
25 correspondence.

1 And, again, very briefly attempting to
2 paraphrase what apparently occurred here, can you
3 confirm for me that the Ministry found that harvesting
4 and tertiary road construction occurred within a
5 120-metre reserve around the lake. Is that what
6 happened here, Mr. Cary?

7 MR. CARY: A. That's correct.

8 Q. And this apparently was contrary to
9 the cut approval; is that right?

10 A. That's what the letter says, yes.

11 Q. Now, unlike the previous trespass
12 that we just looked at, Mr. Cary, there appears to be
13 no confusion about the flagging of the reserve.

14 This would appear to have been an
15 intentional act on behalf of the -- on the part of
16 field staff, the company staff and yet, again, this
17 attracted no penalty and perhaps you can -- can you
18 confirm that in fact no penalties were assessed for
19 these infractions?

20 A. These two conditions contrary to that
21 particular cut approval, yes, there was no further
22 action taken, there was no penalty assessed because of
23 the reasons given in the letter.

24 Q. Now, at the second page of this
25 document, there is an indication that:

1 "The construction did not involve any
2 merchantable
3 timber as a road followed an old trail.
4 This
5 trail however was overgrown with brush
6 and

7 immature poplar which was bulldozed."

8 Do you know how much brush or poplar may
9 have been bulldozed along this trail?

10 MR. GORDON: A. I can help here. If you
11 look at the map--

12 MR. CARY: A. The map, yes.

13 MR. GORDON: A. --it appears you can
14 see -- if you look on the map, which is the third page
15 of the letter, you can see the road coming down to a
16 point of land on Agonzon Lake.

17 Now, Mr. Chairman, if I can just point to
18 it and try and be helpful here. That is the road right
19 here -- excuse me, right here. (indicating)

20 THE CHAIRMAN: Do you want to describe it
21 for the record?

22 MR. GORDON: Okay. It is the road
23 proceeding from the right-hand side of the page at the
24 middle to a point of land in the northeast corner of
25 Agonzon Lake which projects southwest into the lake.

1 And I am fairly sure that I have actually
2 driven along that road and there was a small picnic
3 area on that point. And so all I am trying to say is
4 that the amount of brush that would have been on that
5 road would be very limited.

6 MR. LINDGREN: Q. Now, there is an
7 indication that brush and poplar were bulldozed but the
8 construction did not involve any merchantable timber.
9 Is that why a penalty was not imposed?

10 MR. GORDON: A. Based on the letter
11 that's what I would surmise.

12 Q. Now, in the first infraction, the
13 harvesting was in the 120-metre standing timber reserve
14 where there is an indication that -- or an implicit
15 indication that merchantable timber had been taken
16 within the reserve, are you aware of how much timber
17 was taken?

18 A. In Agonzon Lake?

19 Q. I am looking at paragraph 1, the
20 first page of the letter.

21 A. No, I am not aware of how much wood
22 was involved.

23 MR. CARY: A. It says a 'small portion
24 of the reserve was cut', and we are just having trouble
25 with how big is a small portion for the map.

1 MR. GORDON: A. It's the area that is
2 shaded in black.

3 MR. CARY: A. Yes.

4 Q. Is it safe to say that as a general
5 principle no penalty will be imposed if a small volume
6 is taken?

7 MR. GORDON: A. I don't think you can
8 say that because, if I recall the interrogatory you
9 have referred to where there was 12 infractions, if I
10 recall some of the areas and volumes, assessments of
11 penalties were fairly small. So, therefore, I think we
12 have some indication that in some instances we will
13 assess a penalty where there is a small volume of wood
14 involved.

15 MR. LINDGREN: Okay, thank you. While we
16 are still on the issue of trespass, Mr. Chairman, I
17 would like to file an extract from an MNR document
18 titled: Review of Timber Management in Lake Superior
19 Provincial Park dated July, 1989.

20 And I can advise this is only a portion
21 of this lengthy document. I should also indicate that
22 during the break we have attempted to block out the
23 names of the companies; however, the photocopying
24 machine was a little too efficient and it was able to
25 read the blacked in portions and I apologize for that.

1 MR. HUFF: (handed)

2 THE CHAIRMAN: Well, we shall close our
3 eyes when we read it.

4 MR. LINDGREN: Which exhibit was that,
5 Mr. Chairman?

6 THE CHAIRMAN: 949.

7 ---EXHIBIT NO. 949: MNR Document entitled: Review of
8 Timber Management in Lake Superior
Provincial Park dated July, 1989.

9 MR. LINDGREN: Q. Mr. Cary, on the
10 second page of this two-sided document there is a
11 reproduction of Table 4 of this document.

12 The table is entitled: Timber Harvesting
13 Infractions on Lake Superior Provincial Park since
14 Master Plan implementation.

15 It's not my intention to go through each
16 and every infraction, Mr. Cary, but can you simply
17 confirm for me that this list contained some 13
18 harvesting infractions that occurred within the Lake
19 Superior Provincial Park since 1981.

20 MR. CARY: A. There were 13 infractions
21 listed here. The list ends in 1984, so in a three-year
22 period. I don't know what transpired from '84 onwards,
23 it's not shown.

24 whether your 'since Master Plan
25 implementation' is true, I'm not sure. Is there more

1 to this table?

2 MR. LINDGREN: There is a slight
3 discrepancy here, Mr. Chairman, and I will just advise
4 you and the witnesses of it.

5 This same information that is contained
6 in Table 4 was provided to our client from, I believe
7 the, district -- the Chairman of the Lake Superior
8 Provincial Park Plan. He reproduced virtually an
9 identical table; however, his list includes a 1988
10 infraction which does not appear in the official
11 document. We are quite frankly at a loss to explain
12 why or how that could have occurred.

13 In any event, it's not particularly
14 relevant other than the fact that there would appear to
15 be 14 infractions as opposed to 13. The actual number
16 is not important, Mr. Chairman.

17 Q. In any event, returning to Table 4, I
18 should also indicate that the letter to my client was
19 dated May 8th, 1989. So I assume that's the update of
20 the list but, in any event, the table that's contained
21 in this document, Exhibit 949, indicates that there are
22 13 infractions that were detected and penalized.

23 Five of these were for unauthorized
24 cutting and the remainder were for wasteful practices;
25 is that correct, Mr. Cary?

1 MR. CARY: A. Yes.

2 Q. And on the right-hand column we see a
3 range of penalties which were imposed. These
4 penalties range from a low of \$56 for an 1982
5 infraction, to a high of \$1,113 for a 1983 infraction.

6 Now, turning to the \$56 penalty, we see
7 that it was imposed for unauthorized cutting of Crown
8 timber and the volume given there is 26 cubic metres
9 and it's indicated there that is an insignificant
10 volume.

11 And then, can I ask you to turn to the
12 first 1984 infraction. Do you have that, Mr. Cary?

13 A. Yes, that is wasteful practices?

14 Q. Wasteful practices. There is an
15 indication that merchantable timber and the volume of
16 24 cubic metres were left and a penalty of \$166 were
17 imposed.

18 Now, Mr. Cary, we seem to have wood
19 volume of approximately the same amount and yet we have
20 a \$56 penalty imposed in one situation and a penalty
21 approximately three times larger imposed in another
22 situation. And what would be the rationale for this
23 apparent inconsistency?

24 THE CHAIRMAN: Well, just a moment.
25 Before we get into that, I thought we covered this area

1 once. Is it within the discretion of an individual as
2 to the assessment and imposition of the penalty,
3 whether it's the Minister or a delegated official, and
4 if it is, that's the way the Act is set up, surely it's
5 within that person's discretion.

6 Surely that person has the authority and
7 ability to assess the factual situation before him and
8 assess a penalty. If he assesses one penalty and it's
9 high and another penalty, it's low; if the Act or the
10 legislation or the Order-in-Council authority, or
11 whatever gives him that discretion, I don't think you
12 can go beyond that, Mr. Lindgren.

13 MR. LINDGREN: Well, Mr. Chairman, I
14 think there is one question that flows from that with
15 respect. The Minister does have the discretion to
16 impose a penalty. I'm interested in the exercise of
17 that discretion, I'm interested in what circumstances
18 would lead the person to impose essentially different
19 penalties for essentially the same offence.

20 THE CHAIRMAN: Well, how can you get that
21 out of these people if you haven't got the assessing
22 person here?

23 MR. LINDGREN: Well, I'm not asking about
24 the particulars here, I'm asking him, in general, what
25 circumstances would lead that designate to impose

1 radically different penalties.

2 MR. CARY: It's case by case.

3 MS. MURPHY: And perhaps -- I mean
4 obviously the witness doesn't have background
5 information for all of these things and he can't
6 respond on these on a case by case basis. So I would
7 suggest my friend have a look at the policy that he's
8 asked us for and determine whether that does not in
9 fact answer his questions.

10 MR. MARTEL: But there does seem to be
11 some inconsistency.

12 MR. CASSIDY: Mr. Martel, when we are
13 faced with a document --

14 MR. MARTEL: No uniformity, I'm just
15 saying based on the facts that we have here, there
16 doesn't seem to be anything that relates.

17 MR. CARY: Not necessarily, Mr. Martel.

18 MR. CASSIDY: I agree, but the facts you
19 have, Mr. Martel, you have a piece of paper.

20 MR. MARTEL: That's right.

21 MR. CASSIDY: And I think you should be
22 careful - and I mean no disrespect - but you should be
23 careful as to any facts whatsoever simply based on some
24 figures that are here.

25 MR. MARTEL: Mr. Cassidy, I'm simply

1 looking at the size, 26 metres in one - cubic metres -
2 and 24 cubic metres in the other and in fact the
3 penalty is almost three times higher.

4 MR. CASSIDY: Right.

5 MR. MARTEL: Now, I simply -- I can't
6 handle that in that way. I don't know what accounts
7 for the difference.

8 MR. CASSIDY: Right.

9 MR. MARTEL: What is an apparent
10 difference in the assessment of whatever penalty for
11 what reason. I don't know what the details are, I
12 accept that.

13 MR. CASSIDY: Right.

14 MR. MARTEL: But there doesn't seem to be
15 some sort of consistency flowing from that.

16 MR. CASSIDY: Well, that's my point, Mr.
17 Martel, is that I agree with you there is a difference
18 on the face, but whether or not there is an
19 inconsistent application or inconsistent application of
20 discretion I think is not something that this Board can
21 draw in the absence of having further facts, and that
22 is right.

23 I'm sorry I jumped up.

24 MR. MARTEL: No, that's fine.

25 MR. CASSIDY: I didn't mean any

1 disrespect, I did not, but when you say there is an
2 inconsistency on the face, with respect I take issue
3 with that. There's a difference on the face, but
4 whether or not there is an inconsistent application of
5 discretion or the principles behind the discretion, I
6 think is another issue.

7 MR. LINDGREN: That is precisely what I'm
8 intending to get at, Mr. Chairman, what are the
9 principles behind the exercise of that discretion. I
10 think that is a relevant matter for this Board to hear.

11 Q. And perhaps, Mr. Cary, you can shed
12 some light on that subject?

13 MR. CARY: A. Well, one thing I would
14 like to say is that the penalty is assessed on the
15 basis of multiples of stumpage. So you could have the
16 same volume but assessed penalties would be very
17 different, the same volume of wood.

18 And also, they are two different offences
19 as well, one is unauthorized cutting of Crown timber
20 and the other is wasteful practices, which may again
21 give rise to differences.

22 THE CHAIRMAN: Mr. Lindgren, can we await
23 to see if there's a policy regarding the imposition of
24 penalties that the Ministry appears to follow, if there
25 is one. If there is one, it may enlighten you in terms

1 of what the principles that are applied are. If there
2 is no policy, and there may not be --

3 MR. CARY: And finally, the species
4 involved might again influence the nature of the
5 penalties assessed.

6 THE CHAIRMAN: Well, if there are no
7 policies dealing with it, then this isn't helpful
8 unless you know all of the circumstances behind it.

9 It may be that there are all kinds of
10 mitigative measures that might have been taken by the
11 person who is ultimately charged or assessed, et
12 cetera, that were taken into account in terms of the
13 penalty imposed. It's very difficult.

14 MR. MARTEL: Could I ask Mr. Cary a
15 question then? Mr. Cary, in reporting then, so that
16 people can get the full import of what is happening in
17 each of these instances, would it not be wise to have a
18 little more information so as people who are looking at
19 it would be able to understand what is going on?

20 MR. CARY: I agree.

21 MR. MARTEL: It could be a misleading
22 document in the sense that you don't know.

23 MS. MURPHY: But, Mr. Martel, the problem
24 is this: We have no idea what this was prepared for.

25 MR. CARY: Yes.

1 MS. MURPHY: So it's difficult--

2 MR. MARTEL: But it's a public document.

3 MS. MURPHY: --it's difficult to respond
4 as to whether this gives the information required
5 unless we have some idea of--

6 MR. MARTEL: No, Ms. Murphy, it's a
7 public document though; isn't it?

8 MR. CARY: But what is the table for? I
9 don't know what the table is for. There might be other
10 information in this same report that might give you --
11 that might elucidate on the nature of these penalties.
12 I'm just not sure.

13 MR. MARTEL: If there was a description
14 that goes with it. We haven't got that.

15 MR. CARY: We haven't got that, and I
16 don't know if one exists either and that's why I'm
17 cautious to answer.

18 MR. MARTEL: We will know by tomorrow,
19 will we?

20 MS. MURPHY: I don't know.

21 MR. LINDGREN: Well, perhaps, Mr.
22 Chairman, we can resolve this difficulty by undertaking
23 to file a copy of this document, if that is what my
24 friend would wish.

25 MR. MARTEL: Where is the whole document?

1 MR. LINDGREN: I mean, I should also
2 advise the Board that we had some difficulty in
3 obtaining this, but we will certainly undertake to
4 provide further copies to the parties and the Board, if
5 the Board thinks that is appropriate or advisable.

6 ---Discussion off the record

7 THE CHAIRMAN: Are you going to be
8 dealing with this area in your own case?

9 MR. LINDGREN: That is difficult to say.
10 This issue involves the exercise of discretion from the
11 Minister or his designate. There are two separate and
12 distinct exercises of that discretion; the first is
13 whether or not a penalty should be imposed; and the
14 second is, what should the quantum of that penalty be.

15 Now, to this point I'm unclear as to
16 whether or not this is a completely untrampled,
17 uncontrolled, unfettered discretion on the part of the
18 designate, or whether or not there is a policy document
19 that provides some clear and effective guidance as to
20 when a penalty will be imposed and what penalty will be
21 imposed.

22 THE CHAIRMAN: All right. Let's not deal
23 with this any further until we have an indication from
24 the Ministry whether or not there is a policy, okay.
25 And we would like the Ministry to respond quickly on

1 that. You should be able to get that information by
2 making a few telephone calls, as to whether there is a
3 policy.

4 MS. MURPHY: There is no problem. I'm
5 advising you there is a policy, there is a procedure
6 and we can probably obtain it and provide it to my
7 friend tonight, he could have had it yesterday.

8 THE CHAIRMAN: Okay. Let's curtail all
9 further questions on this until we ascertain whether
10 there is a policy, and you're saying there is, and what
11 the policy says and we will find that out tonight or
12 tomorrow.

13 Then we will go from there, Mr. Lindgren,
14 and see how far we can investigate the discretion of
15 the person who was authorized to impose the penalty.
16 And it may be that he has wide discretion, and
17 certainly the Act doesn't seem to fetter that
18 discretion, at least in terms of the Minister.

19 MR. LINDGREN: Mr. Chairman, I can advise
20 that I do have further documents on this particular
21 issue that I do intend to raise but perhaps I will
22 stand them down pending the delivery of this policy
23 document.

24 THE CHAIRMAN: Well, you might as well
25 file them today so that parties have a chance, if they

1 haven't got them already, to review them overnight so.
2 we won't have to waste time tomorrow.

3 MR. LINDGREN: Very well then. There are
4 actually three documents that I intend to file, Mr.
5 Chairman.

6 MS. MURPHY: May I ask, Mr. Lindgren, if
7 he is going to be asking for some specific information
8 from these other documents, that he let us know so that
9 if there is some opportunity to obtain it and provide
10 it now, we can do that.

11 I don't know if we can, but if he can
12 tell us what specifics he might be going to - I'm not
13 asking him to do it here now obviously - we might be
14 able to expedite matters.

15 THE CHAIRMAN: It would be helpful.

16 MR. LINDGREN: That's correct, and I will
17 advise you if I require further or specific information
18 about these documents.

19 The first, Mr. Chairman, is a summary of
20 warning letters 1984 to 1988, Temagami Crown Management
21 Unit. Perhaps, Mr. Chairman, you then have the summary
22 of infractions 1969 to '87 on the Latchford Management
23 Unit.

24 THE CHAIRMAN: All right. Let's give
25 these some numbers so we can keep track of them. This

document, the Latchford one, will be Exhibit 950.

---EXHIBIT NO. 950: Summary of infractions 1969-1987
re: Latchford Management Unit.

THE CHAIRMAN: The table of warning
letters will be Exhibit 951.

MR. LINDGREN: And that is for the
Temagami Crown Management Unit?

THE CHAIRMAN: That's correct.

---EXHIBIT NO. 951: Table of warning letters 1984-1988
re: Temagami Crown Management
Unit.

MR. LINDGREN: The next document, Exhibit
951, is the MNR letters or memos, and I can advise this
is for the Latchford Crown Management Unit.

THE CHAIRMAN: 952.

---EXHIBIT NO. 952: MNR letters or memos re: Latchford
Crown Management Unit.

MRS. KOVEN: Excuse me, Mr. Lindgren,
what is Exhibit 952 about, mNR letters and memos?

MR. LINDGREN: That is the summary of MNR
letters or memos that were generated with respect to
the Latchford Crown Management Unit.

MRS. KOVEN: Pardon me?

MR. LINDGREN: Latchford.

MRS. KOVEN: Oh, Latchford as well.

Okay.

1 MR. LINDGREN: In any event, those are
2 the exhibits I will be revisiting at some future point
3 and most likely tomorrow morning.

4 Q. Mr. Cary, can I ask you to move on to
5 your discussion of the legislation and enforcement of
6 that legislation, other than the Crown Timber Act. Can
7 I first ask you to turn to page 39 of the witness
8 statement?

9 Do you have that document, Mr. Cary?

10 MR. CARY: A. Yes, I do.

11 Q. Now, at the top of page 39, the first
12 full paragraph, there is an indication that:

13 "Enforcement of legislation is a
14 strong regulatory mechanism that promotes
15 the achievement of environmental
16 protection and good timber practices."
17 And skipping down to the third part:
18 "Legal action is a coercive method of
19 achieving compliance with good
20 environmental practices should education
21 or other preventive actions fail. The
22 likelihood of penalties and legal costs
23 as well as adverse publicity are strong
24 deterrents."

25 Now, Mr. Cary, would you agree with me

1 that despite the benefits that are listed here of
2 taking legal action to enforce legal requirements,
3 would you agree with me that to this point the MNR's
4 enforcement powers in that regard have been under used?

5 A. No, I would not agree with that
6 statement.

7 Q. Can I ask you then to return to
8 Exhibit 928B and return to the letter of March 13th,
9 1989 from Ms. Murphy to Ms. Swenarchuk. Now, at page 5
10 of that letter, Mr. Cary --

11 THE CHAIRMAN: Which letter?

12 MR. LINDGREN: The March 13th letter, Mr.
13 Chairman.

14 MS. MURPHY: March 13th?

15 MR. LINDGREN: This is the one with the
16 page that starts with Question No. 3. Oh, I am sorry,
17 it might be page No. 4. My copy is not clear.

18 Q. Do you have that passage, Mr. Cary?

19 MR. CARY: A. Yes, I have question 3,
20 "Please provide..."

21 Q. "Please provide a province-wide
22 compilation of infractions and actions
23 taken under various statutes for which
24 OMNR has authority for the most recent
25 year."

1 And that year was 1987 and '87. And the
2 answer indicates:

3 "There is some difficulty obtaining some
4 of that information, the reason being
5 it's hard to determine whether or not
6 charges under the statutes other than the
7 Crown Timber Act were imposed in relation
8 to timber management activities."

9 And I accept that. Now, when we turn to
10 page 5 there is a breakdown of the three statutes and
11 under charges we see zero charges under the Fisheries
12 Act related to timber management, 15 charges under the
13 Public Lands Act related to timber management, and one
14 charge under the Lakes and Rivers Improvement Act
15 related to timber management.

16 And then for warnings we see under the
17 Fisheries Act, 15 warnings; Public Lands Act, 91
18 warnings; and under the Lakes and Rivers Improvement
19 Act, 34 warnings.

20 Now, in light of this track record, Mr.
21 Cary, would you agree with me that the Ministry is much
22 much more likely to impose a warning as opposed to lay
23 a charge in relation to timber management activities
24 that contravene any of the provisions of those Acts?
25 I mean, that's fairly self-evident; is it not?

1 A. Yes, there are many more warnings
2 than charges, but I would expect that.

3 Q. And why is that?

4 A. Many of these -- I can't speak for
5 the nature of these particular charges, I don't know
6 the details or the details of the warnings.

7 But it's my experience - and again, I'm
8 talking about Crown timber Act where we assess
9 penalties, and this is a different system, I
10 understand, this is when you go to court and are
11 charged - but, in my experience, warnings are more
12 common than assessment of penalties. Again, as I say,
13 each case is individually assessed and infractions are
14 sometimes inadvertent, unintentional.

15 Q. If the infraction is in inadvertent
16 or unintentional, I take it then it is unlikely that a
17 charge would be laid?

18 MS. MURPHY: Well, it's certainly
19 unlikely that a charge would be successful. These are
20 quasi-criminal situations when you are dealing with the
21 Fisheries Act, Public Lands Act, Lakes and Rivers
22 Improvement Act, Mr. Chairman.

23 I think you can take notice of the fact
24 that if you had a situation where the act was
25 unintentional, it would be meaningless.

1 MR. LINDGREN: I disagree, although this
2 is a matter for argument, but I disagree that the due
3 diligence defence is automatically equated with an
4 unintentional act.

5 In any event that was not the question I
6 put to Mr. Cary.

7 MR. CARY: There were many more warnings
8 than charges, I agree.

9 MR. STRAIGHT: Mr. Lindgren, I might be
10 able to help you a little bit in some of those areas,
11 simply from my experience in the past as a district
12 manager and going back too as a regional biologist.

13 I don't profess by any stretch of the
14 imagination to be an expert in enforcement, but one of
15 the primary roles of our enforcement program is an
16 educational role. We generally try and achieve
17 compliance with activities through education, to the
18 degree that we can, and that is a major focus of our
19 enforcement program by the way.

20 As well, when you look at the word
21 'warnings' here, without further definition you don't
22 know what that means. The fact that a company or an
23 individual may have been warned does not necessarily
24 mean that there is evidence to lay a charge.

25 There may be -- a warning could

1 constitute, in this particular instance, a case where
2 under the Public Lands Act where an individual
3 operation is ceasing -- is near the end of its
4 operations there is a number of litter around the site
5 in the form of oil cans or so. The individual may
6 simply indicate that if he is pulled out, he is still
7 contactable, he's left that behind, he's said: Hey, by
8 the way fellow, you better remove that material. That
9 would constitute a warning.

10 So you can't interpret what you said from
11 that. In fact you could look at it in the reverse and
12 say that the Ministry is very actively looking at those
13 sections in those Acts, and indeed they have had people
14 in the field that have seen that and have taken a
15 deliberate form of action to correct a situation which
16 they observed which they did not feel was desirable.

17 MR. LINDGREN: Q. Thank you, Mr.
18 Straight. Mr. Cary, you just referred a few moments
19 ago to a policy in existence that governs the
20 imposition of penalties under the Crown Timber Act,
21 and earlier in this hearing we have seen Exhibit 372
22 which is the Eastern Region Fish Habitat Protection
23 Enforcement Guidelines.

24 In essence, this document provides
25 guidance to field officers in terms of the

1 investigation and laying of charges for infractions
2 under the Fisheries Act.

3 My question to you, Mr. Cary, is: Does a
4 similar document exist with respect to the Public Lands
5 Act or the Lakes and Rivers Improvement Act and, if
6 not, why not?

7 MR. CARY: A. I don't know the answer to
8 that question. I don't know if one exists.

9 THE CHAIRMAN: Okay. Ms. Murphy, we
10 might as well sort of short circuit this at this point.

11 Will you undertake to find out if there
12 are any policy documents dealing with imposition of
13 penalties or other policies regarding enforcement with
14 respect to all of the Acts over which MNR has
15 jurisdiction, meaning the Fisheries Act, Public Lands
16 Act, Lakes and Rivers Improvement Act, and the Crown
17 Timber Act.

18 MS. MURPHY: Well, I'm glad we brought it
19 down to those four, because I think there are 29 at
20 least altogether.

21 THE CHAIRMAN: No, those four.

22 MS. MURPHY: We will undertake to provide
23 what we can locate.

24 MR. LINDGREN: Well, Mr. Chairman, if and
25 when that answer is provided I may have further

1 questions.

2 Q. Now, aside from the possibility that
3 that documentation exists, Mr. Cary, can I ask you
4 this: Does the Ministry have an overall enforcement
5 policy or strategy in the timber management context?

6 MR. CARY: A. That policy that you have
7 asked for will espouse that.

8 Q. I'm speaking of an overall formal
9 expression of the Ministry's policy in terms of its
10 enforcement of statutes that are related to timber
11 management activity?

12 MS. MURPHY: Why don't we just put that
13 in the same category.

14 MR. CARY: Yes, please.

15 MS. MURPHY: I'm concerned, and I do have
16 to rise and say, my friend has now asked for a number
17 of things and he says he wants to cross-examine further
18 and he hasn't asked for any of this before and I'm
19 concerned that now we're going to go over and over.

20 THE CHAIRMAN: Well, what we would like
21 you to do is, we would like you to come back as
22 expeditiously as possible with whether or not there are
23 these policies in existence, then we will ask Mr.
24 Lindgren to cross-examine on it if he has has further
25 questions, very quickly.

1 We are hoping to have all of this
2 accomplished, Mr. Lindgren, prior to this panel rising.

3 MR. LINDGREN: I'm hopeful of that too,
4 Mr. Chairman.

5 THE CHAIRMAN: We are not going to recall
6 them for any purpose.

7 MR. LINDGREN: Far be it for me to insist
8 on recalling a witness. I'm confident that this
9 information can be provided in an expeditious manner.

10 I'm about to embark on a slightly
11 different area, Mr. Chairman, and I do recall that you
12 indicated yesterday you were thinking about
13 entertaining submissions on the other matter at five
14 o'clock.

15 THE CHAIRMAN: How long are you going to
16 be to complete?

17 MR. LINDGREN: Subject to the questions
18 that I still have relating to these three documents and
19 having regard to a few of the other questions I have on
20 Document No. 3, I would estimate that I would have
21 probably an hour.

22 THE CHAIRMAN: All right. We will
23 complete your examination tomorrow at 8:00 when we
24 start.

25 And we will perhaps take a 10-minute

1 break at this time and then come back and hear the
2 further submissions of the parties with respect to
3 dealing with the media, and then adjourn for the
4 evening.

5 MR. LINDGREN: Thank you.

6 --- (Panel withdraws)

7 --- Recess taken at 5:00 p.m.

8 --- On resuming at 5:15 p.m.

9 THE CHAIRMAN: Thank you, be seated,
10 please.

11 Ms. Murphy?

12 MS. MURPHY: Yes, Mr. Chairman, I expect
13 to be about ten minutes on this matter, and perhaps
14 less.

15 I would like to advise you first that the
16 matter before you now is, in our view, essentially one
17 of proper practice before an administrative tribunal
18 and for that reason I would like to advise you that my
19 submissions are being made on behalf of counsel for the
20 Ministry of Natural Resources in our lawfirm Houser,
21 Henry, Loudon and Syron.

22 THE CHAIRMAN: Sorry, your submissions
23 are being made on behalf of...?

24 MS. MURPHY: Counsel for Ministry of
25 Natural Resources.

1 THE CHAIRMAN: Counsel for the Ministry
2 and your lawfirm?

3 MS. MURPHY: That's right, sir.

4 THE CHAIRMAN: Okay. Not the --

5 MS. MURPHY: Not the Ministry.

6 MR. LINDGREN: Mr. Chairman, I don't
7 understand that.

8 THE CHAIRMAN: Wait a minute, I missed
9 something in there. You are speaking as counsel for
10 the Ministry?

11 MS. MURPHY: Well, I guess it may be
12 clearer if I say the submissions that I would like to
13 make would be made on behalf of counsel and I say
14 counsel for the Ministry just to identify who I mean,
15 the three of us, and for our lawfirm. This is not a
16 matter on which I have taken instructions from the
17 Ministry of Natural Resources.

18 THE CHAIRMAN: Okay. Fair enough.

19 MS. MURPHY: And I would suggest to you
20 the issue really is essentially this, it's a question:
21 When parties are involved in a matter that is being
22 considered by a tribunal and where that tribunal has
23 the authority to make decisions which affect the rights
24 of the parties, what are the appropriate standards of
25 conduct for counsel and other representatives before

1 that Board and their clients when dealing with the
2 media with regard to those matters?

3 I make the point first of all that, in
4 our view, the question goes farther in this particular
5 case than just the lawyers. First of all, I would
6 suggest that you should also consider other people who
7 are representing parties before this Board given the
8 nature of this hearing, and also consider the degree to
9 which these standards apply to clients, and I would
10 suggest that the reasons for the standards exist
11 whether the comment is being made by representatives of
12 parties or clients, and it's our view that it's our
13 duty and responsibility to communicate those standards
14 to our clients.

15 Now, Ms. Cronk has suggested to you that
16 there are legally three standards and I would just
17 repeat. Speaking from my notes she suggested that they
18 were as follows: First, there should be no criticism
19 of other parties or counsel in the media; second, that
20 one must not expressly or impliedly criticize the Board
21 by suggesting unfairness in the procedure or in the way
22 the Board is conducting the hearing; and, finally, that
23 one cannot argue or urge a particular result on a
24 matter pending before the Board because this can be
25 seen as an indirect or direct effort to influence the

1 decision.

2 With respect to those standards I would
3 suggest that that is certainly our understanding of
4 what the standards are and, in addition, I would advise
5 the Board that it is these concepts that we have
6 ourselves communicated to our clients. I would also
7 like to note that these, in our view, are standards
8 that apply to all tribunals and courts including this
9 one and that while this particular hearing may be
10 longer than some and may involve broad areas of public
11 interest, I would suggest there are a couple of other
12 matters here that should also inform your decision.

13 In fact I would suggest there are a
14 couple of things here that militate for having the
15 Board articulate those standards and I would suggest
16 that those are two: First of all, I would suggest it
17 would be useful because some of the parties appearing
18 before you with representatives may benefit from
19 having -- the representatives may benefit from having
20 that advice. I would also suggest that having that
21 advice from the Board would probably assist all of us
22 in communicating those standards to our clients.

23 And I think you have already been told
24 that the main concept really is this: That when a
25 matter is being dealt with by a tribunal which has

1 authority to make a decision, it shows disrespect for
2 the hearing process to criticize the tribunal itself or
3 the parties to the hearing, including their counsel, or
4 the adequacy of the evidence other than in the hearing
5 room.

6 And you have also been told that where
7 people do that it imposes a real unfairness and
8 interferes with the right to be heard of the people who
9 are being criticized where they are following these
10 rules or these standards and don't have an opportunity
11 to respond.

12 I would agree that the principles do not
13 stop a party from providing information to the press,
14 in fact that is one of our responsibilities, and it
15 does not stop a party from advising the public about
16 their own positions in an temperate way, but what it
17 does stop is having parties make perjorative statements
18 about the Board's or other parties' decisions and
19 motives. And I would suggest it also stops people from
20 doing anything that has the appearance of attempting to
21 influence the outcome of a decision of the Board by
22 arguing for a specific result outside the hearing room.
23 And, of course, it is always unacceptable for people to
24 make statements that are just misleading. I don't
25 think that needs to be said much further.

1 I just have essentially three comments
2 with respect to how this kind of behaviour, if it
3 occurs, could injure the Board, other parties and in
4 fact all of our own clients. With respect to the Board
5 Ms. Cronk referred you to two of the rules in the
6 Professional Conduct Handbook. I would like to refer
7 you to one more. Unfortunately I don't have copies,
8 but there is just one section in particular I would
9 like to refer you to and I will be giving you copies
10 when I can get them made.

11 This is Rule 11. The general rule says:
12 "The lawyer should encourage public
13 respect for and try to improve the
14 administration of justice."

15 And under the commentary to that rule
16 there is a specific section dealing with criticizing
17 the tribunal. I think it's useful to consider that
18 section because it helps us to understand the reasons
19 for the rule. And what it says is:

20 "That although proceedings and decisions
21 of tribunals are properly subject to
22 scrutiny and criticism by all members of
23 the public including lawyers, members
24 of tribunals are often prohibited by law
25 or custom from defending themselves.

1 Their inability to do so imposes special
2 responsibilities upon lawyers."

3 Firstly:

4 "The lawyer should avoid criticism which
5 is petty, intemperate or unsupported by a
6 bona fide belief in its real merit
7 bearing in mind that the in the eyes of
8 the public professional knowledge lends
9 weight to the lawyer's judgments or
10 criticisms."

11 Secondly:

12 "If the lawyer has been involved in the
13 proceedings there is a risk that any
14 criticism may be or may appear to be
15 partisan rather than objective."

16 And, thirdly:

17 "Where a tribunal is the object of
18 unjust criticism, the lawyer as a
19 participant in the administration of
20 justice is uniquely able to and should
21 support the tribunal both because its
22 members cannot defend themselves and
23 because the lawyer is thereby
24 contributing to the greater public
25 understanding of and respect for the

1 legal system."

2 I would suggest that very clearly sets
3 out the reason for that rule.

4 THE CHAIRMAN: Does that also tie in with
5 the concept that the lawyer is an officer of the court
6 and, by extension, an officer of the tribunal?

7 MS. MURPHY: Absolutely. You have heard
8 already about the kind of prejudice this kind of
9 comment could create for other parties, the people who
10 are the object of the criticism.

11 I have one other matter that I think is
12 essential for this particular proceeding that I think
13 we should all bear in mind. This proceeding is not a
14 situation where you have two litigants who are angry
15 with each other, who are going to have a decision
16 rendered and their difficulties resolved and they go
17 home.

18 This is a situation instead where the
19 members of all of the organizations and the individuals
20 who are before you have long ongoing relationships,
21 they have existed in the past, and what is very
22 important in this hearing, they will continue to exist
23 long into the future and long after the lawyers who are
24 involved in this matter have gone home.

25 And I would suggest that in that set of

1 circumstances it is incumbent upon us to the best of
2 our ability to maintain those good relationships.

3 THE CHAIRMAN: Thank you.

4 Well, there is no particular order for
5 this so perhaps, Mr. Lindgren, we will just move around
6 the room.

7 MR. LINDGREN: Thank you, Mr. Chairman.

8 At the outset, Mr. Chairman, I should
9 indicate that I will be approximately 20 minutes I hope
10 at most.

11 Now, Mr. Chairman, in considering the
12 question of whether the Board should establish a
13 standard or code for the conduct of counsel and for the
14 parties as Ms. Cronk and Ms. Murphy have suggested, we
15 respectfully submit that the Board has no jurisdiction
16 to establish any constraints on counsel or the parties.
17 However, should the Board wish to consider in a
18 positive or proactive sense the roles and the rights of
19 the participants and the public regarding media
20 coverage of this hearing, we submit that it would be
21 helpful if the Board were to underline or emphasize the
22 importance of the fullest possible public debate of the
23 very public issues in this hearing.

24 THE CHAIRMAN: Keep going.

25 MR. LINDGREN: In our view, Mr. Chairman,

1 the guiding criterion here should be the right of the
2 public to information. And as you know, Mr. Chairman,
3 judicial interpretation of the Charter guarantee of
4 freedom of expression has emphasized this public right
5 to information and has indicated it is a basic
6 necessity for the democratic process. In our
7 submission, this recognition should be the governing
8 criteria in the Board's development of any code
9 regarding any content.

10 And, in this sense, Mr. Chairman, we
11 disagree with Ms. Cronk's characterization of the
12 issue. She indicated to you yesterday that in her
13 submission this was simply an issue of legal ethics,
14 courtesy, fairness and professional conduct, and she
15 was quoting the words from Mr. Justice Grange in that
16 regard. We respectfully submit that this matter is
17 much more than that; in our view this does quite
18 clearly involve a matter of free speech and freedom of
19 the press.

20 Ms. Cronk has in effect invited the Board
21 to establish what we regard as very substantial
22 constraints on the rights of counsel and the parties to
23 communicate with the press and that, in my view, is a
24 matter of free speech.

25 Now, let me turn first to our

1 jurisdictional submissions, the submission that the
2 Board has no authority or jurisdiction to impose
3 constraints.

4 Here, Mr. Chairman, our respectful
5 submission is that the Board's jurisdiction to control
6 its own process does not extend to imposing constraints
7 on the rights of counsel with respect to communications
8 with the media. It is clear that the Board does have
9 the authority, when faced with a matter that might
10 constitute contempt, to state a case to the Divisional
11 Court for a citation of contempt.

12 Now, Mr. Chairman, it is difficult to
13 imagine what type of conduct could or should result in
14 such a citation, but we submit for example that a
15 statement that the Board is blatantly biased or is
16 acting out of improper or self-interested motives,
17 those kinds of statements could well be within the
18 category of contempt. However, Mr. Chairman, in our
19 submission statements not amounting to such misconduct
20 in our view cannot be constrained by the Board without
21 contravening Section 2(b) of the Charter of Rights and
22 Freedoms, this being the guarantee of freedom of
23 expression.

24 THE CHAIRMAN: Okay. Are you taking the
25 position, Mr. Lindgren, that the Law Society's rules of

1 ethics as they apply to counsel are unconstitutional by
2 virtue of the Charter of Rights?

3 MR. LINDGREN: Mr. Chairman, I will be
4 turning very momentarily to the rules of professional
5 conduct. I think that you will see when we review the
6 commentary under Rule 21 there are no such constraints
7 on the ability of counsel in this type of proceeding to
8 contact the press and, in fact, in our submission,
9 those commentaries provide a very positive obligation
10 or incentive for lawyers to contact the press. So in
11 that sense there really is not a constraint as we see
12 it in the rules of procedure or the rules of
13 professional conduct that would amount to that sort of
14 contravention.

15 THE CHAIRMAN: No, but in the rules of
16 ethics that we reviewed yesterday dealing with
17 counsels' relationship with the media, and it dealt
18 specifically with counsels' contact with the media, are
19 you taking the position that those rules as articulated
20 by the Law Society are unconstitutional because they
21 infringe the free speech guarantee in the Charter of
22 Rights?

23 MR. LINDGREN: Mr. Chairman, that is not
24 the issue today and, with respect, I don't think I have
25 to take a position on that issue, however, I do repeat

1 my earlier submission; that is, we think the rules of
2 professional conduct protect -- not constrain, they
3 protect the right of counsel to speak with the media
4 and in that sense we don't see them as a constraint.

5 In any event, I will be returning in a
6 few moments to Rule 21 and its commentary and I will be
7 examining the commentaries thereunder.

8 Now yesterday, Mr. Chairman, you were
9 invited by Ms. Cronk to follow the example of Mr.
10 Justice Grange in the Sick Children's Hospital Inquiry.
11 Very briefly, Mr. Chairman, in our submission, if we
12 were to arguing the facts of that situation as opposed
13 to the facts that gave rise to this discussion, in our
14 view the Grange decision would be clearly
15 distinguishable on its facts; however, relying on the
16 Board's assurance that this issue is to be dealt with
17 at the generic level only, we will not proceed to that
18 factual discussion.

19 However, we would note that the Grange
20 Inquiry was a very different proceeding than this
21 environmental assessment hearing in that the Grange
22 Inquiry was not a hearing examining government policy
23 of broad impact and importance to all residents of
24 Ontario; Mr. Chairman, the Grange Inquiry was
25 essentially an investigation of certain deaths that

1 occurred at the Hospital for Sick Children but it was
2 not a criminal investigation and, in that sense, Mr.
3 Justice Grange had to tread a very fine line between
4 the need for public information and the need to protect
5 reputations in that case.

6 We respectfully submit that that is a
7 very different context than the present one where we
8 are publicly examining issues of broad public policy.

9 I think that is an important distinction,
10 Mr. Chairman, and in addition to that distinction --

11 THE CHAIRMAN: Well, what if that was a
12 criminal proceeding, do you think that would affect
13 counsel's ability to deal with the media if in fact you
14 have the criminal proceeding at the time that the
15 criminal proceeding is before the court?

16 MR. LINDGREN: I'm not certain of the
17 question, Mr. Chairman.

18 THE CHAIRMAN: If the Grange Inquiry was
19 in fact a criminal proceeding - I agree with you it
20 wasn't - would that inhibit counsel's relationship with
21 the media, ability to speak to the media on a case that
22 is presently before a court in a criminal proceeding

23 MR. LINDGREN: In my respectful
24 submission the answer is no, within certain parameters
25 and I will get into those parameters in a moment. But

1 generally if that were a criminal proceeding we still
2 submit that, in general, a lawyer would still have an
3 obligation to contact the press, or at least make
4 himself or herself available to speak to the press. As
5 I indicated, I will perhaps try to circumscribe or
6 identify those parameters that may in fact constrain
7 counsel.

8 Now, in addition to the distinction that
9 I just raised - and we will get back to it, Mr.
10 Chairman - there are, in our view, several significant
11 legal developments in this area of law that have
12 occurred since the Grange Inquiry and, in our view,
13 these developments clearly indicate that Mr. Grange
14 would likely reach a different conclusion or decision
15 today; that is not a certainty by any means, but as I
16 will discuss, I think that we may well have seen a
17 different outcome. I'm saying that we can't really
18 rely on his decision some years ago.

19 THE CHAIRMAN: I assume you haven't
20 canvassed him for his opinion.

21 MR. LINDGREN: That's right, that is why
22 there are no certainties here, Mr. Chairman. But in
23 light of some of the legal developments, I think that
24 is a sustainable proposition.

25 Now, Mr. Chairman, there is of course

1 growing jurisprudence on the scope and the meaning of
2 Section 2(b) of the Charter and it's not my intention
3 to canvass those authorities, however, we would like to
4 simply refer to one important case and that is the
5 decision of the Divisional Court in re Klein and Law
6 Society of Upper Canada and re Dvorak and Law Society
7 of Upper Canada.

8 Mr. Chairman, I have copies available and
9 I would like to distribute them to the parties and to
10 the Board. This was a 1985 decision of Justices Eberle
11 and Callaghan with a dissent by Mr. Justice Henry.

12 MR. HUFF: (handed)

13 MR. LINDGREN: And, Mr. Chairman, I can
14 advise that this case does discuss the
15 constitutionality of Law Society regulations or at
16 least the ones that were in effect at the time.

17 Mr. Chairman, this was a judicial review
18 application for a declaration that the existing Law
19 Society rule prohibiting lawyers from advertising was
20 in fact a contravention of the Charter and, in
21 addition, and perhaps more to the point, lawyer Dvorak
22 had contacted the media with respect to this Law
23 Society prohibition and he was further charged by the
24 Law Society with breaching the existing Law Society
25 rule against lawyers contacting the press, and he

1 therefore sought a declaration that this rule too was
2 unconstitutional and was of no force or effect.

3 Now, in our view, Mr. Chairman, this case
4 is extremely important in the present context since the
5 court held that the Charter guarantee of freedom of
6 expression does protect the lawyer's communications
7 with the press.

8 More specifically, Mr. Chairman, the
9 court made four findings that have had or that do have
10 considerable bearing on the issue before us, and I
11 would like to briefly review these four findings with
12 the Board.

13 The first is found at page 527 of this
14 decision.

15 THE CHAIRMAN: There on the final
16 paragraph under the heading Status of the Rules of
17 Commentaries there is a highlighted portion that
18 indicates:

19 "It appears however on the material
20 before this court that the Law Society in
21 convocation treats both the commentaries
22 and the rules in the same manner."

23 And continuing on to page 528:

24 "In my view --"

25 This is at the last line of the first

1 paragraph:

2 "In my view there is no basis for
3 differentiating between the rules and the
4 commentaries for the purposes of these
5 applications."

6 Mr. Chairman, this statement by the
7 Divisional Court is significant because I will be
8 referring to the present rule, Rule 21 in a few moments
9 but I will be relying heavily upon the commentaries
10 that we find under Rule 21.

11 Now, further down on page 528, halfway
12 through that large paragraph, the Court finds that:

13 "Regulating the lawyer's right to speak
14 amounts to regulating clients and the
15 public rights."

16 The Divisional Court held:

17 "In promulgating rules relating to legal
18 advertising or relations between the
19 press and bar, the Law Society is
20 performing a regulatory function on
21 behalf of the Legislature and the
22 government of Ontario within the meaning
23 of Section 32 of the Charter. In so
24 doing it is regulating not only the
25 rights of the lawyer to speak but also

1 the rights of the potential clients and
2 the public at large to be informed."

3 Mr. Chairman, we regard that as a
4 particularly important statement.

5 Now, the third finding that I would like
6 to draw the Board's attention to --

7 THE CHAIRMAN: Just a minute. Just stop
8 there for a minute. Are you differentiating from the
9 public's right to be informed in a factual way about
10 the proceeding as opposed to counsel's right in that
11 context to be able to criticize either the proceedings
12 themselves, indirectly the Board, other counsel or the
13 evidence itself?

14 I mean, I don't think there is much
15 argument - and I don't think Ms. Cronk took that
16 position, frankly - that counsel cannot meet with the
17 media and put forward their client's position or
18 anything factual which occurred at the proceedings. I
19 think what we are dealing with is, when you go beyond
20 that and put forward opinions which have the effect of
21 criticizing other counsel, other parties or the Board
22 directly or indirectly.

23 And the reason I say that is because it
24 appeared that what was happening in this case, from my
25 brief reading of it, is that there was some attempt to

1 inhibit the lawyer from divulging or commenting on fees
2 charged for various services, and it wasn't the type of
3 comment that criticized anything necessarily, it was
4 whether or not the lawyer could divulge to the media
5 practices about the profess relating to the divulging
6 of fees and charges for various services where the Law
7 Society purportedly said no, you can't, and the court
8 held that it is in the public interest for the public
9 to have that factual information and held it to be in
10 effect covered by the Charter's free expression.

11 Now, that's a very different question
12 from whether or not you have the right to go out there
13 and go beyond putting forward the factual positions
14 relating to the proceedings that are ongoing before a
15 court or tribunal at that time. We are talking about
16 different types of conduct.

17 MR. LINDGREN: That is correct, Mr.
18 Chairman. But I would respectfully submit that nothing
19 turns on the factual basis of the comments on the Klein
20 case. We make no distinction between presenting a
21 client's position on the evidence and going further
22 than that and commenting, perhaps even critically, on
23 the evidence that has been led before the Board.

24 THE CHAIRMAN: Okay. So you are
25 indicating, as I understand your position, that this

1 case is authority for the proposition that you can go
2 beyond stating factual things about the proceeding and
3 can criticize or give your opinion which may have the
4 effect of criticizing other counsel, other parties, or
5 the tribunal itself. Is that your position?

6 MR. LINDGREN: That is correct, Mr.
7 Chairman.

8 THE CHAIRMAN: Okay. As long as we have
9 got your position clear.

10 MR. LINDGREN: And, in fact, on this
11 point I can refer the Board to page 532 of the decision
12 at the bottom paragraph, there the court finds that the
13 Charter guarantee of freedom of expression protects
14 opinions expressed about government policy. I will be
15 returning to this point in a few moments. The
16 Divisional Court held that:

17 "Prima facie then, the freedom of
18 expression guaranteed by s. 2(b) of
19 the Charter would appear to apply to the
20 expression of ideas and opinions relating
21 to the political and government domains
22 of the country."

23 As you know, Mr. Chairman, to this point
24 I don't think the actual provision of section 2(b) of
25 the Charter has been provided to you and I don't have

1 it but as you know, Mr. Chairman, section 2(b) does
2 provide that everyone has the freedom of thought,
3 belief, opinion and expression including freedom of the
4 press and other media communication.

5 THE CHAIRMAN: I think it is set out at
6 the beginning of the case somewhere.

7 MS. SEABORN: Page 529, Mr. Chairman.

8 THE CHAIRMAN: 529.

9 MR. LINDGREN: Thank you, Ms. Seaborn.

10 In construing section 2(b), Mr. Chairman,
11 Mr. Justice Callaghan writes -- on page 532, the last
12 full paragraph, he makes the comments that I have just
13 read and then construes a previous Divisional Court
14 interpretation of the scope of section 2(b). This is
15 the Koumoudouros and Municipality of Metropolitan
16 Toronto decision where Mr. Justice Eberle wrote:

17 "The close linking in s. 2(b)
18 are the freedoms of thought, belief
19 opinion and expression suggests
20 rather that freedom of expression refers
21 to the freedom of communication of ideas
22 and opinions among the citizens of
23 Canada, so that in broad terms those
24 citizens may continue to live in the free
25 and democratic society referred to in

1 s. 1 of the Charter."

2 Then further down he indicates:

3 "These words reinforce the view that
4 the thrust of s. 2(b) is in the
5 political and governmental domain, a
6 domain in which the freedoms of thought,
7 belief, opinion and expression are
8 inseparable from a free and democratic
9 society."

10 And as I will explain in a few moments,
11 those statements clearly apply to the present context,
12 Mr. Chairman.

13 Now, the fourth finding that I would like
14 to draw the Board's attention to, and perhaps the most
15 important finding, is found at page 540 of the
16 decision. Here under the heading Conversations with
17 the Press, Mr. Justice Callaghan writes:

18 "The applicant, Dvorak's, contacting of
19 the press is entitled to the protection
20 of s. 2(b). I adopt, without repeating,
21 my discussion of the purpose and function
22 of s. 2(b) of the Charter and
23 of the jurisprudence of both Canada and
24 the United States respecting freedom of
25 expression. The applicant's expression

1 here was precisely the kind intended to
2 be protected by the Charter and serves a
3 social purpose and provides information
4 on a matter of potential public interest
5 and debate, namely, the manner of fee
6 advertising for lawyers."

7 Then Mr. Justice Callaghan reproduces the
8 text of Rule 13 as it then existed and at the bottom of
9 page 540 he goes on to write:

10 "A lawyer has a moral, civic and
11 professional duty to speak out where he
12 sees an injustice. Furthermore, lawyers,
13 by virtue of their education, training
14 and experience, are particularly
15 well-equipped to provide information and
16 stimulate reason, discussion and debate
17 on important current legal issues and
18 professional practices: see Rule 12."

19 THE CHAIRMAN: Okay. But where does that
20 go beyond the factual information about the practices
21 under discussion?

22 The court appears to be saying in that
23 that there is a public interest and a social purpose to
24 have the manner of fee advertising for lawyers
25 discussed publicly, I am not saying there is any

1 argument about that, but where does it allow the
2 counsel under the protection of freedom of expression
3 to go beyond to criticize the conduct of the other
4 participants to the proceeding before the Board or the
5 court?

6 MR. LINDGREN: Mr. Chairman, our
7 submission is this: Mr. Justice Callaghan has
8 recognized that communications by lawyers on matters of
9 public interest serve a social purpose and provides
10 information on matters of public interest.

11 In this case, Mr. Chairman, we are
12 dealing with a public statute, a very public statute;
13 namely, the Environmental Assessment Act, where the
14 public interest is paramount and is explicitly set out
15 in the statute. We are dealing with an application for
16 approval submitted by a public agency dealing with the
17 management of a public resource on public lands that
18 surely is a matter of wide and important public
19 interest, and comments on how that particular agency
20 participates in this regulatory process, comments on
21 the evidence led by that public party I think are
22 protected by the Charter within certain parameters and
23 those are the parameters I will discuss when I get to
24 the portion of my submissions dealing with the kind of
25 code or direction that the Board should give, and I

1 would be happy to revisit this issue at that time, Mr.
2 Chairman.

3 I sense that I haven't satisfied your
4 question at this point. I would just ask you
5 respectfully to stand it down, hear the submissions on
6 that point and, if it is still a problem, Mr. Chairman,
7 then I would be happy to entertain further questions at
8 that time.

9 Now, continuing on page 541, the
10 Divisional Court holds that:

11 "A client's interest in many situations
12 and, more particularly, a client's
13 freedom of expression may be legitimately
14 served by having his client initiate
15 contact with the news media."

16 And skipping the next line:

17 "In addition, the public has a
18 constitutional right to receive
19 information with respect to legal issues
20 and matters pending in the courts and in
21 relation to its profession and its
22 practices."

23 Now, again, I will be delving into that
24 issue in a few moments. I would just like to leave the
25 Divisional Court decision by referring to page 542

1 where Mr. Justice Callaghan addresses the issue of
2 whether or not other safeguards are in place to deal
3 with truly derogatory or unprofessional comments. This
4 is found in the second paragraph at page 542 where Mr.
5 Justice Callaghan writes:

6 "If the concern is that a lawyer may
7 disparage the courts, the Law Society or
8 a fellow lawyer, then adequate safeguards
9 already exist. To contact the press and
10 denigrate improperly a fellow lawyer or
11 the Law Society would surely be conduct
12 unbecoming a barrister and a solicitor
13 and it would not be protected by the
14 Charter since its purpose was one for
15 which the Charter was not designed."

16 And stopping right there. We agree with
17 that, we have no problems with that.

18 "And as to a contact made in contempt of
19 the court, that is a matter for the
20 court, not the Law Society to regulate
21 (though such a judicial finding might be
22 grounds for further discipline by the
23 Law Society)."

24 Now, Mr. Chairman --

25 THE CHAIRMAN: So why is that area any

1 different from (a) the conduct initially complained of
2 in this motion that was first brought to the Board, we
3 didn't go into details, but in terms of what is
4 requested for the Board to articulate in terms of
5 counsels' duty; why is that statement inconsistent with
6 what is being asked by Ms. Cronk?

7 MR. LINDGREN: The court here clearly
8 recognizes that there are safeguards in place to
9 govern --

10 THE CHAIRMAN: But did not the court also
11 recognize that the Charter was not designed to protect
12 that kind of conduct?

13 MR. LINDGREN: That's right, and that was
14 the point I was trying to raise earlier. There are
15 certain types of conduct that are not protected by the
16 Charter and in that category I would include comments
17 that are derogatory or unprofessional in that they
18 criticize the competence or ability of counsel. That
19 kind of comment, Mr. Chairman, does not attract the
20 protection of the Charter, largely because that is not
21 a matter of public interest.

22 I mean, where, on the other hand,
23 comments have been made about the evidence that is
24 being led in a particular public hearing, I think that
25 clearly falls within the domain of the governmental

1 domain, that clearly is a matter upon which counsel or
2 the parties can speak and that speech is protected by
3 the Charter, in our submission.

4 In any event, Mr. Chairman, I don't
5 intend to refer to the Klein decision any further other
6 than to ask the Board to have regard to the statements
7 that are made and to have regard to those statements in
8 light of the comments that will follow in my
9 submissions.

10 Now, as a result of the Klein decision,
11 Mr. Chairman, the relevant rules of the Law Society
12 were changed and the new rule, Rule 21, was put into
13 place to govern the relationship between lawyers and
14 the media. In our submission, and as I have indicated
15 earlier, Rule 21 provides positive encouragement to
16 lawyers to provide information to the media,
17 particularly when acting in public hearings such as
18 this one.

19 Now, Mr. Chairman, Rule 21 has been
20 previously distributed to the Board and to the parties;
21 it is not my intention to review it in any detail, I
22 would simply read the first paragraph, a portion
23 thereof, where it is set out that:

24 "Lawyers in their public appearances and
25 public statements should conduct

1 themselves in the same manner as with
2 their clients, their fellow
3 practitioners, the courts and tribunals.
4 Dealings with the media are simply an
5 extension of the lawyer's conduct in a
6 professional capacity."

7 Mr. Chairman, that I think is
8 self-explanatory and I am not intending to go deal with
9 that, I just draw your attention to it and, in our
10 submission, this rule clearly recognizes that the
11 interests of a client can and should be served by the
12 lawyer speaking with or dealing with the media.

13 THE CHAIRMAN: I don't think anybody has
14 raised exception with lawyers speaking with the media.
15 I don't think with respect, Mr. Lindgren, that's the
16 issue before us.

17 If the issue was: Should lawyers have
18 conduct with the media while a case is before the
19 Board, I think we can provide you with the answer right
20 now: Yes, they may. There is nothing to prohibit that
21 kind of conduct, in fact, although it may not be
22 necessarily encouraged in all cases, it may well be in
23 the interest of the client that there is that contact.
24 And if such is the case, there is no prohibition either
25 in the Law Society rules of ethics or in any of the

1 court decisions that the Board is aware of.

2 But that's not the issue, the issue is:
3 When that contact is made, are there any rules
4 concerning what the lawyer may say concerning the case
5 before the tribunal or the court and what the lawyer
6 may say with respect to other counsel, other parties
7 and the evidence and the tribunal.

8 MR. LINDGREN: Mr. Chairman --

9 THE CHAIRMAN: That's the issue, that's
10 the line that we are asked to draw, if there is a line
11 to be drawn.

12 MR. LINDGREN: I agree that is the issue
13 and, in my respectful submission, that is the very
14 issue that is addressed in the commentary under Rule
15 21. It does set out some direction as to what lawyers
16 should or should not say to the media and, for that
17 reason, we submit it is necessary to look at some of
18 those commentaries and some of the provisions within
19 those commentaries, and I intend to do so very briefly,
20 Mr. Chairman.

21 I would refer the Board to paragraph No.
22 1 under the commentary where it indicates that the --
23 Mr. Chairman, if the Board does not have the rule, I
24 have extra copies over here.

25 THE CHAIRMAN: Unfortunately, we left the

1 commentary upstairs. Do you have an extra copy?

2 MR. HUFF: (handed)

3 THE CHAIRMAN: Thank you.

4 MR. LINDGREN: I was referring to the
5 first commentary where it is indicated that:

6 "The media has recently shown greater
7 interest in legal matters, which is
8 reflected in the more comprehensive
9 coverage of the passage of legislation at
10 the national and provincial levels and of
11 those cases before the courts affecting
12 the social, economic, and political life
13 of society."

14 Skipping to the next line:

15 "Media reporters have accordingly sought
16 out the views not only of lawyers
17 directly involved in particular Court
18 proceedings, but also of lawyers who
19 represent special interest groups or have
20 recognized expertise in the field in
21 order to obtain information and provide
22 commentary."

23 In my submission, Mr. Chairman, clearly
24 environmental groups, environmental coalitions or other
25 public interest groups surely fall within the ambit of

1 special interest groups.

2 THE CHAIRMAN: No argument, as qualified
3 by the next paragraph.

4 MR. LINDGREN: That's correct. And I
5 would like to -- I was intending to get to that.

6 The next paragraph does recognize that
7 the lawyer can and should assist the media by conveying
8 accurate information to the public and it is proper for
9 the lawyer to do so:

10 "So long as there is no infringement of
11 the lawyer's obligations to the client,
12 the profession, the Courts or the
13 administration of justice."

14 THE CHAIRMAN: And it is those last words
15 that is the crux of this whole proceeding before us
16 today.

17 MR. LINDGREN: That's right.

18 THE CHAIRMAN: What are the standards
19 with respect to the lawyer's obligations to the client,
20 the profession, the courts or the administration of
21 justice.

22 MR. LINDGREN: If I can summarize it, Mr.
23 Chairman. Within the existing laws of libel, slander
24 and contempt, there are virtually no constraints on the
25 ability of counsel or the parties to speak to the media

1 on public issues.

2 THE CHAIRMAN: And add to that the Law
3 Society's jurisdiction to discipline its own members.

4 MR. LINDGREN: That's correct, sir.

5 THE CHAIRMAN: If it decides that that
6 conduct is unbecoming of a barrister or solicitor, you
7 may be kissing your licence to practice good-bye.

8 MR. LINDGREN: That's correct, however --

9 THE CHAIRMAN: If they want to take the
10 ultimate sanction.

11 MR. LINDGREN: In our submission,
12 however, Mr. Chairman, where the misconduct or the
13 statements do not amount to libel, slander, contempt or
14 unprofessional conduct, those comments or statements
15 cannot be constrained in any way, shape or form by this
16 Board or any other tribunal. That will be our
17 submissions.

18 THE CHAIRMAN: What about where the
19 information conveyed is inaccurate?

20 MR. LINDGREN: Where the information is
21 inaccurate, there are, as Mr. Justice Callaghan
22 discussed, certain safeguards and remedies. Now, the
23 safeguards and remedies that he referred to were to be
24 found in the Law Society rules that may or may not be
25 applicable to counsel in a particular situation.

1 With respect to factual statements that
2 are inaccurate, I would suggest that the parties, if
3 they are upset about inaccuracy, have a remedy in the
4 arena of public debate; that is, they can join issue in
5 the media, they can write a letter to the editor, there
6 is no end to the types of different remedies that are
7 available, where that conduct or where those comments
8 do not amount to contempt, libel or slander or
9 unprofessional conduct.

10 THE CHAIRMAN: Would you consider
11 litigating a case in the media at the same time as it
12 is before the tribunal --

13 MR. LINDGREN: Mr. Chairman, that is
14 conduct that I think would amount to unprofessional
15 behaviour on the part of the lawyer.

16 THE CHAIRMAN: Would it be in the
17 interest of the administration of justice, in your
18 view?

19 MR. LINDGREN: Pardon me?

20 THE CHAIRMAN: Would it be in the
21 interest of the administration of justice--

22 MR. LINDGREN: To litigate a matter in
23 the press?

24 THE CHAIRMAN: --to comment in the media
25 about matters which are before the Board or court for a

1 decision at the same time?

2 MR. LINDGREN: Our submission will be,
3 sir, that that is fair comment provided it is accurate.

4 THE CHAIRMAN: Okay.

5 MR. LINDGREN: Now, returning to the
6 commentaries under Rule 21, sir. I would like to draw
7 the Board's attention to commentary No. 3 which
8 indicates:

9 "The lawyer is often called upon to
10 comment publicly on the effectiveness of
11 existing statutory or legal remedies, on
12 the effect of particular legislation or
13 decided cases, or to offer an opinion
14 with respect to cases that have been
15 instituted or about to be instituted.
16 This, too, is an important role the
17 lawyer can play to assist the public in
18 understanding legal issues."

19 I think that is not litigating the matter
20 before -- litigating in the press, that is certainly or
21 simply information about pending matters, as we
22 construe that commentary, Mr. Chairman.

23 The fourth commentary indicates that:
24 "The lawyer is often involved as an
25 advocate for special interest groups

1 whose objective it is to bring about
2 changes in legislation, government
3 policy, or even heightened public
4 awareness about certain issues. This is
5 also an important role that the lawyer
6 can be called upon to play."

7 Now, finally, Mr. Chairman, to speed
8 things up, I would refer to paragraph -- or commentary
9 No. 5. This paragraphs indicates that:

10 "Given the variety of cases that can
11 arise in the legal system, particularly
12 so far as civil, criminal and
13 administrative proceedings are concerned,
14 it is simply impossible to set down
15 guidelines which would anticipate every
16 possible circumstance. There are going
17 to be circumstances where the lawyer
18 should have no contact with the media
19 and other cases where the lawyer is under
20 a specific duty to contact the media to
21 serve properly the client - the latter
22 situation arising more often in the
23 context of administrative boards and
24 tribunals where a given tribunal is an
25 instrument of government policy and

1 hence is susceptible to public opinion."

2 I take that commentary to mean, sir,
3 there is no overall rule. In other words, the
4 appropriateness of media contact by counsel is to be
5 judged on the facts of the specific matter and,
6 further, this commentary recognizes that lawyers are
7 more often under a specific duty to contact the media
8 in the administrative context.

9 Now, Mr. Chairman, in our submission the
10 Klein decision and the subsequent development of Rule
11 21 are important legal developments that must be
12 considered by the Board in this case.

13 There is a third important legal
14 development or precedent that we would urge the Board
15 to have regard for and that is the recent ruling by Mr.
16 Justice Holden in the Patricia Starr Inquiry. We have
17 reproduced the relevant portions of that transcript,
18 Mr. Chairman. I would distribute those to the parties
19 and the Board at this time.

20 MR. HUFF: (handed)

21 THE CHAIRMAN: Thank you.

22 MR. LINDGREN: As we are all aware, there
23 had been considerable interest in this inquiry by both
24 the public and the media and not surprisingly the issue
25 of lawyers and parties talking to the media has arisen

1 in that inquiry.

2 On October 24th, 1989 a complaint was
3 made to Mr. Justice Holden that one of the parties and
4 her lawyer both made what were viewed to be
5 inappropriate comments to the media on matters that
6 were still pending before the Commission. I should
7 advise that these extracts are from Volume 16 of that
8 transcript.

9 Now, first I would refer the Board to
10 page 86 where the complaint is made by Mr. West that
11 friends of a Mrs. Stone and Mrs. Stone's lawyer, Mr.
12 Levitt, were overheard talking to the press during the
13 break and the subject matter of the comments was Mrs.
14 Stone's cross-examination by Mr. West.

15 Now, on page 87 Mr. West makes a motion
16 with respect to that matter. He indicates that -- he
17 invites his Lordship to view the interviews that were
18 conducted:

19 "...so that your lordship is fully
20 advised of the contents and what was
21 said, both by Mrs. Stone's friends as
22 well as Mr. Levitt."

23 Mr. Justice Holden responds:

24 "As far as the friends go, they have the
25 right to speak to the press as they

1 wish."

2 Then further down on that page, Mr. West
3 continues that:

4 "...my lord, I think that there should be
5 some sort of ruling made by your
6 lordship, and that this is the second
7 aspect of the motion that I am making,
8 that your lordship make some form of
9 ruling with respect to counsel speaking
10 to the press about this matter that's
11 before this inquiry."

12 Then turning to the next page, page 88,
13 Mr. Chairman, in the middle of the page Mr. West
14 submits that his Lordship:

15 "...should make a ruling with respect to
16 counsel speaking to the press because I
17 think it's inappropriate. It's fighting
18 this matter in the newspapers and the
19 media as opposed to having the evidence
20 heard during the course of the
21 Commission, and then your lordship coming
22 to whatever conclusions in the report at
23 the end of it all."

24 And then Mr. West makes a comment that
25 Ms. Cronk made yesterday in that there is an inability

1 on the part of some persons or some parties to respond
2 to statements that are made in the press.

3 Now, on page 89, Mr. Chairman, Mr. Levitt
4 replies and he indicates that he disagrees with the
5 general submissions made by Mr. West that it is
6 improper to have counsel speaking with the press per
7 se, and then Mr. Levitt indicates what he believes the
8 subject matter of his comments was.

9 Now, on page 90, the Commission counsel
10 Mr. Brown offers his views on the situation. Mr. Brown
11 indicates towards the end of page 90:

12 "Obviously the Commission cannot exercise
13 control over counsel. There are
14 provisions in the Code of Conduct that
15 relate to what counsel can do and cannot
16 do. Personally, I am surprised that
17 counsel would be giving an interview
18 to the press during cross-examination,
19 when his witness is being cross-examined
20 on any subject."

21 And then continuing at the bottom of the
22 page:

23 "I think that, as you have previously
24 indicated, so far as the inquiry is
25 concerned, it is the responsibility of

1 individual counsel to abide by what are
2 the appropriate standards of counsel. I
3 do not think it is appropriate, with
4 respect, for the inquiry to make an order
5 directing that counsel should not talk to
6 anyone, including the press."

7 Then further, Mr. Brown submits that:

8 "...I do not think that it is a matter
9 that you as the Commissioner in this
10 inquiry can control because I do not
11 think that you have the right, as a
12 matter of law, to say what shall and
13 shall not be printed in newspapers or
14 broadcast. You do have the power under
15 the Public Inquiries Act to deal with
16 situations of contempt of your inquiry
17 where the reporting, in whatever media,
18 has the effect of interfering with the
19 process of the inquiry. I would have
20 thought that the way in which interviews
21 of the kind that have been described are
22 measured has to be in terms of that
23 power."

24 Now, turning to page 93, Mr. Chairman,
25 Mr. West makes his final reply, and the reason I am

1 dealing with it is because it's reminiscent of the
2 submissions made by Ms. Cronk and perhaps Ms. Murphy as
3 well.

4 "It concerns me..." Mr. West argues,
5 "...that he uses the press and he uses
6 the press at a point where his client is
7 being cross-examined by myself..."

8 And there were comments and then he
9 discusses what those comments were:

10 "They were very derogatory comments and
11 my submission to your lordship is that
12 your lordship at least should be viewing
13 that video to determine in fact what Mr.
14 Levitt did say because I think that's a
15 matter your lordship can and does have
16 jurisdiction to deal with in terms of
17 the comments that are made by counsel to
18 the press when a witness, their witness
19 is in the witness stand. And throughout
20 the course of the inquiry as well."

21 THE CHAIRMAN: And the answer is
22 supposedly revealed on page 95.

23 MR. LINDGREN: That is correct, sir.

24 Very briefly, the Commissioner holds that
25 he has no power to control what the friends of Mrs.

1 Stone may or may not say to the press. He goes on to
2 indicate that:

3 "With regard to what is said by counsel,
4 as I have said before in this inquiry,
5 there are standards of professional
6 conduct and I expect counsel to abide by
7 them. If anyone isn't sure what those
8 standards are, you can get the rules of
9 the Law Society and the Canadian Bar
10 Association and read them."

11 More importantly, Mr. Justice Holden
12 indicates that he agrees:

13 "...with what my counsel has said, that
14 when a witness is being examined or
15 cross-examined, that counsel should not
16 speak to the press."

17 THE CHAIRMAN: See, the difficulty that
18 we have here, as this member of the Board perceives it,
19 is: Mr. Justice Holden harkens back to the rules of
20 the Law Society and the rules of professional conduct
21 and he says basically the rules are there, everyone can
22 read them, counsel should know what they mean and there
23 are remedies provided.

24 But he then refers on the next page to
25 his remedy to cite for contempt and he indicates, as I

1 have read this very quickly, that he is going to view
2 the video that night and if he decides that there is a
3 problem, he may decide to cite that person, that
4 counsel and have it taken to the Divisional Court.

5 This is precisely what we want to avoid
6 in this proceeding. We don't want every time there is
7 a statement made by counsel in the media to have other
8 counsel running in here and saying to the Board:
9 Please take a look at this statement or please take a
10 look at what this counsel did and decide whether we,
11 under our powers under the Statutory Powers Procedure
12 Act, should be citing that particular counsel for
13 contempt and referring it on to the Divisional Court.

14 And that is why, at least in the view of
15 this member, it would probably be helpful to all
16 parties for the Board to indicate what it believes the
17 standard should be and probably taking into account the
18 Law Society's Rules of Conduct and the cases, et
19 cetera, to give counsel an indication of where the line
20 supposedly is.

21 And there is no doubt that if the line is
22 crossed by any particular counsel that there will be a
23 motion probably put before the Board to take a specific
24 passage or a specific electronic media occurrence and a
25 request for the Board to take further action.

1 What we would like to do, quite frankly,
2 is to avoid that because this is going to be a very
3 lengthy proceeding and we have no doubt that counsel
4 from a variety of parties are going to have contacts
5 with the media; and there is nothing wrong with
6 contacts with the media, it is just a matter of where
7 the rules of conduct should be drawn in those contacts
8 with the media.

9 MR. LINDGREN: In that sense, Mr.
10 Chairman, we agree with the comments of Mr. Justice
11 Holden; that is, that the line should be drawn to
12 clearly indicate that statements amounting to contempt
13 are unacceptable and that a tribunal should be
14 receptive to any submissions that a comment does in
15 fact amount to contempt.

16 However, we also agree with Mr. Justice
17 Holden's ruling that there are rules of professional
18 conduct governing this situation, it can remind counsel
19 of those obligations, but in essence there is nothing
20 that the administrative tribunal can or should do about
21 statements that do not amount to contempt. We draw the
22 line at contempt.

23 Now, Mr. Chairman, reading Klein and Rule
24 21 and the ruling in the Holden Inquiry together --

25 THE CHAIRMAN: Just a minute. Would it

1 be helpful - and I am just asking this in a rhetorical
2 sense - is it helpful for the Board to set out some
3 criteria as to what it might consider to be contempt?

4 I mean, contempt is a word, what does
5 contempt mean? Because presumably if you put before us
6 certain statements, we have to make the prima facie
7 finding that there may be contempt. It is not us, it
8 is not up to this tribunal to decide, to determine
9 whether in fact that is contempt, that's left for the
10 Divisional Court.

11 MR. LINDGREN: That's right, Mr.
12 Chairman.

13 THE CHAIRMAN: But prior to the Board
14 referring it off to the court, surely we have to take a
15 look at what the conduct was and then decide, based on
16 our evaluation of that conduct, as to whether it should
17 be referred on.

18 MR. LINDGREN: That may be appropriate in
19 certain situations, Mr. Chairman, but I think it is
20 unnecessary for the Board to promulgate any sort of
21 directive or code indicating what might constitute
22 contempt and I think that would be redundant, I think
23 it would be counterproductive, and I think it would be
24 unnecessary given that there is an extensive body of
25 case law on the issue of contempt.

1 I take it that the Board can get any
2 guidance that it needs from that extensive
3 jurisprudence. I am not sure it is necessary for the
4 Board to identify up front what it may regard as
5 contempt. In fact, it is our submission that in
6 situations that do not amount to contempt, the Board,
7 this Board has no jurisdiction to constrain or censure
8 counsel for comments made in the press that do not
9 amount to contempt.

10 On the jurisdictional point, we would
11 note that the Board is a statutory creation of the
12 Legislature and that the Environmental Assessment Act
13 does not give the Board any expressed or implied
14 authority to impose constraints or parties with respect
15 to the media, and I would submit that's also true of
16 the Statutory Powers Procedure Act.

17 And, in addition, we submit that the
18 Board has no authority to require undertakings of any
19 kind from counsel with respect to dealings with the
20 media. In our submission, Mr. Chairman, to require
21 such an undertaking from any counsel would, in a very
22 literal sense, exceed the Board's jurisdiction; it
23 would certainly invite review, it would also result in
24 serious prejudice to the rights of the client and the
25 counsel in these proceedings. This is particularly

1 true where the client has specifically instructed
2 counsel to speak freely with the media on issues before
3 the Board.

4 We respectfully submit that the Board has
5 no authority to effectively constrain the client's
6 rights to give this instruction to counsel nor, in our
7 submission, can the Board impair counsel's ability to
8 carry out those instructions.

9 We note the possibility that's referred
10 to by Ms. Cronk and Ms. Murphy that the Board's code of
11 conduct may apply to parties. In our view, this action
12 is beyond the jurisdiction of the Board and, to our
13 knowledge, no court or tribunal has taken such a
14 far-reaching step. In our submission, there is no
15 precedent for that kind of action; that was because of
16 the well-recognized tradition and guarantee of freedom
17 of speech and freedom of the press and, our respectful
18 submission, the constitutionally protected status of
19 these freedoms should be the governing criteria in the
20 Board's determination on this matter.

21 Now, at the outset I did indicate that
22 perhaps having regard to the submissions that the Board
23 has no jurisdiction to impose constraints, we suggest
24 that it may be helpful for the Board to develop some
25 sort of general guidance to deal with counsels'

1 relations with the press, but we suggest that this
2 guidance or this direction should take the form of a
3 proactive or a positive perspective rather than a
4 prohibitive or negative one.

5 And if this is to be done by the Board,
6 Mr. Chairman, we propose that the following two
7 principles should be applied by the Board. These
8 principles would be consistent in our view with the
9 constitutional protection of free speech.

10 The first of these is one that I have
11 referred to earlier, Mr. Chairman; that is, within the
12 parameters of the laws of libel and slander and
13 contempt the Board should encourage the broadest
14 possible communications with the press by everyone
15 involved here, counsel and parties alike, with a view
16 to providing the greatest amount of information to the
17 public about the issues in this hearing. And, in fact,
18 from the lawyer's perspective and from the perspective
19 of Rule 21, the Law Society rules and commentary, in
20 our view, clearly implies and encourages a broad range
21 of comments from counsel on issues in this hearing.

22 The second principle, Mr. Chairman, is
23 that the Board and counsel should not be treating this
24 hearing as a private matter litigated between private
25 parties. This is not a lis inter parties, Mr.

1 Chairman, as you well know; this is a public hearing in
2 which the public interest is paramount and, in our
3 submission, Mr. Chairman, this public interest includes
4 not only the right of the public to participate in this
5 hearing but also includes the right to be fully
6 informed about the hearing.

7 Furthermore, in our view, the right to
8 information includes the right to be aware of the
9 differing and contesting views of the parties; so it is
10 not merely information but debate that is made
11 available to the public.

12 As I have indicated earlier, Mr.
13 Chairman, we submit that it's crucial for the Board to
14 consider the public nature of this hearing and its
15 consequences, keeping in mind the judicial findings in
16 Klein that freedom of expression particularly applies
17 to matters in the governmental domain.

18 As I have indicated clearly and earlier,
19 Mr. Chairman, we regard this as a public hearing in
20 that we are dealing with a public statute and, as I
21 have indicated, we are dealing with the publicly owned
22 resource by a public and we are dealing with the
23 management of that publicly owned resource by a public
24 agency of the Crown.

25 And as well, I think it's also important

1 to point out that virtually every full-time party in
2 this hearing is a recipient to a lesser or greater
3 degree of public funds ranging from intervenor funding
4 to FMA funds for projects such as road building.

5 Now, I think it's clear in light of those
6 comments, Mr. Chairman, we are not here to resolve
7 private disputes between the parties, we are all here
8 to serve the public interest in a very public process.
9 I think that is important to keep in mind.

10 THE CHAIRMAN: Well, I don't think you
11 have to go too far along that road. I would suggest
12 that the Board has reached that conclusion earlier than
13 today.

14 MR. LINDGREN: I have no doubt of that,
15 Mr. Chairman. But we would submit it's also important
16 to point out that this hearing does in fact represent a
17 new direction for this regulatory process in that this
18 is the first hearing of a class environmental
19 assessment.

20 As you know, Mr. Chairman, the process
21 itself is evolving during this hearing and, in our
22 view, it's important for the public to be informed by
23 the participating parties through the press on how the
24 process is working or how it is not working. Comments
25 about the process, in our view, Mr. Chairman, should

1 not be construed as disrespect towards the Board or
2 other parties since we regard this as an essential area
3 of information that can and should be conveyed to the
4 public.

5 And in this context, Mr. Chairman, a code
6 regarding media relations should serve this public
7 purpose rather than the private litigation purposes in
8 the conventional historical rules that have developed
9 in the courts and to which Ms. Cronk has referred to
10 yesterday.

11 For example, Mr. Chairman, comments about
12 how a party conducts its case here, particularly when
13 that party is a large public agency of the provincial
14 golf, those kinds of comments should not be construed
15 as criticism of the lawyers involved unless those
16 comments include clearly derogatory reference to
17 counsel.

18 Instead, Mr. Chairman, those kinds of
19 comments should be viewed as a legitimate provision of
20 information to the public about how the Government of
21 Ontario has chosen to participate in this regulatory
22 process and one presumes, of course, that the lawyers
23 acting on their behalf act on instructions from their
24 clients. In our submission criticism of that public
25 client, in our submission, is a Charter protected right

1 and the ability to make these comments must remain
2 unfettered.

3 And very briefly again returning to the
4 process itself, we would respectfully remind the Board
5 that the Class EA process itself is currently under
6 public review by the government's EA PIP Program and,
7 to that end, we submit that a full public discussion of
8 the experiences in this hearing would be of great
9 assistance in that review.

10 Further, Mr. Chairman, it must be noted
11 that this is a hearing about resource management and
12 environmental protection. We are all aware that the
13 environment is an issue of considerable public concern
14 at least according to recent, or public opinion polls;
15 and we are also all aware, Mr. Chairman, that this is
16 an era in which increasingly stringent demands are
17 being made by the public of government and industry in
18 the environmental field.

19 In our view, Mr. Chairman, governmental
20 environmental policy is at the heart of this
21 environmental assessment hearing and again, in our
22 view, this requires the widest possible dissemination
23 of information to the public whether it's laudatory or
24 critical of the policies that are at issue here, Mr.
25 Chairman. In addition, we would respectfully submit

1 that public opinion surveys have repeatedly indicated
2 that the public wants to hear the views of
3 non-governmental environmental groups on these issues.

4 Now, if the Board were to accept the
5 submissions of my friend Ms. Cronk, and if the Board
6 were to censure or constrain in some way an
7 environmental lawyer representing the environmental
8 groups for communications with the media, Mr. Chairman,
9 the chilling effect of that kind of action would
10 clearly discourage the provision of information to the
11 public about the environment and would certainly
12 interfere with a right that is expected and demanded by
13 the public.

14 We also submit, Mr. Chairman, that that
15 kind of action on the part of the Board could well
16 result in criticism of the Board which, in our
17 submission, could be used to undermine the continuing
18 development of the environmental assessment process in
19 this province. In this sense, Mr. Chairman, we submit
20 that it's important for the Board to play a central
21 role in developing and protecting the process and we
22 invite the Board to ensure that information about the
23 process and about this hearing is conveyed to the
24 public.

25 Now in fact, Mr. Chairman, the Board has

1 already taken a lead role in ensuring that that kind of
2 information is conveyed to the public and here I would
3 refer the Board to comments made by the Chairman on the
4 very first day of these proceedings. And I think it's
5 instructive, Mr. Chairman, if those comments are
6 distributed to the parties and the Board.

7 MR. HUFF: (handed)

8 MR. LINDGREN: This is an excerpt from
9 the transcript of Volume 1, it's pages 10 to 13. Very
10 briefly, Mr. Chairman, I would like to refer to some of
11 the comments made by yourself, Mr. Chairman, that we
12 agree with wholeheartedly.

13 So, for example, on page 10 the Board
14 indicates that it:

15 "...is going to actively encourage media
16 coverage of this hearing. Because of the
17 vastness of the geographical area that
18 this undertaking covers, the Board feels
19 that it is essential that information
20 about the proceedings, no matter what
21 location these proceedings are taking
22 place at at the time, is disseminated to
23 as many people as possible."

24 And then in the next paragraph, Mr.
25 Chairman, you indicate that:

1 "We feel that anything the media can do
2 in terms of keeping people abreast of
3 what is happening at the proceeding will
4 be helpful to those people who are unable
5 to attend on a regular basis."

6 And finally, Mr. Chairman, at the bottom
7 of page 12 you indicate that:

8 "There is a public interest involved in
9 this hearing and part of that public
10 interest is in having what goes on here
11 understood and within the knowledge of as
12 many people as possible. We think in
13 this regard the media can be of great
14 assistance and, therefore, we have
15 decided to encourage media coverage of
16 this hearing."

17 Now, in our view, Mr. Chairman, the
18 public cannot be fully and effectively informed about
19 this case or the issues in this proceeding unless the
20 Board permits free and unrestricted access to the press
21 by parties and counsel.

22 In our submission, Mr. Chairman, it
23 follows from these considerations that this process is
24 best served by the widest possible discussion and
25 debate in the media of the issues involved in this case

1 and in fact, as alluded to earlier, Mr. Chairman, it is
2 in such a debate that we submit the remedy lies for Ms.
3 Cronk's clients and if they are concerned about
4 inaccuracies reported in the press, Mr. Chairman, I
5 think it's important to point out that the industry
6 associations and the proponent both have the expertise,
7 the resources and the experience to explain their
8 positions in the media and indeed both have done so
9 frequently in the past.

10 I can indicate to you, Mr. Chairman, that
11 our files contain many articles expressing the views of
12 the other parties in this hearing on various issues
13 that are in dispute and I can also indicate that we do
14 not necessarily agree with these views nor with the
15 characterization of our clients or our client's
16 position. The point here, Mr. Chairman, is that
17 industry representatives and other parties have been
18 frequently quoted in the press about this case and
19 again, as I said, we often disagree with what is said
20 but we do not respond to these views by what we regard
21 as a heavy-handed attempt to invite the Board to become
22 a censor of the views expressed in the media; rather we
23 accept that exchange of views in the media as
24 legitimate public debate and that is debate that cannot
25 or should not be constrained by this Board.

1 And finally on this point, Mr. Chairman,
2 we have heard the suggestion from Ms. Cronk that her
3 clients lack access to the media. This comment is
4 found at page 19 of Volume 156 of the transcript where
5 Ms. Cronk suggests that the media is a forum to which
6 other parties cannot respond, and we have heard that
7 submission again yesterday. In our view, Mr. Chairman,
8 this statement is entirely without foundation. We have
9 all been approached by the press, we have all spoken to
10 the press and we have all written letters to the editor
11 to address press statements with which we disagree or
12 with which we think there have been inaccuracies.

13 THE CHAIRMAN: Well, with respect, Mr.
14 Lindgren, I think - unless I misinterpreted - that Ms.
15 Cronk was alluding to the fact that she would be unable
16 to respond in a manner which, in her opinion if she's
17 right, would breach the rules of professional conduct
18 for counsel.

19 In other words, if one party went out
20 there and said something to the media that in her view
21 did breach the rules, that she would be or other
22 counsel would be unable to respond without themselves
23 breaching the same rules. And it all comes back again
24 to the fact, or the debate that we are having is: What
25 are those rules and where do you cross the line.

1 I think that is what she was saying. She
2 wasn't saying that she has the inability to speak with
3 the media, she has the same ability or any counsel has
4 the same ability and the rules provide for contact with
5 the media, and we as a Board encourage it.

6 Once again, I don't think that is the
7 issue that we are dealing with, it's not whether or not
8 the media should assist the Board and assist the public
9 in learning as much as possible about the hearing,
10 about the process, about everything, we have encouraged
11 it. As you know, this Board has granted far more media
12 contact in terms of the Board itself than I think has
13 occurred in any other hearing, at least before the
14 Environmental Assessment Board, because we recognize
15 fully that all parties cannot be before the Board on a
16 regular basis and there is a public interest that
17 people know what is going on here.

18 It again comes back to: When there is
19 that contact with the media, are there rules of conduct
20 that should be applied or should not be applied with
21 respect to that contact.

22 MR. LINDGREN: Mr. Chairman --

23 THE CHAIRMAN: That is the question. And
24 you are indicating that there shouldn't be, with the
25 exception of going beyond the line for libel, slander

1 and something that will constitute contempt of court.

2 MR. LINDGREN: Mr. Chairman, that is
3 precisely a line that we submit that this Board should
4 recognize.

5 THE CHAIRMAN: Right. And that is your
6 position.

7 MR. LINDGREN: That is our position. Any
8 conduct or comments that do not amount to libel slander
9 or contempt cannot be constrained in any way, shape or
10 form by this Board. That is our submission. We submit
11 the Board has absolutely no authority to do that and,
12 further, the Board has no reason to do that given the
13 existence of other and perhaps more adequate remedies
14 and safeguards that are already in existence.

15 THE CHAIRMAN: Okay. Well, we understand
16 your position. Do you have anything further to add?

17 MR. LINDGREN: I would like to conclude
18 my comments, Mr. Chairman, by respectfully urging the
19 Board that if it intends to develop a code of conduct
20 on this issue, the Board should encourage the parties
21 to find their remedy in the arena of public information
22 and debate in the exchange of views and counterinterviews.

23 In our submission, Mr. Chairman, an
24 ill-conceived retreat to the horric conventions of past
25 legal practices would be contrary to the public

1 interest and, in our view, would be contrary to the
2 Charter of Rights and Freedoms.

3 We respectfully submit that the public
4 interest should be the predominant and determining
5 factor in the Board's determination of this issue.

6 THE CHAIRMAN: Okay.

7 MR. LINDGREN: Those are my submissions,
8 Mr. Chairman.

9 THE CHAIRMAN: Thank you.

10 Ms. Seaborn?

11 MS. SEABORN: Mr. Chairman, my comments
12 are extremely brief on this issue. As you are aware,
13 when the matter first came up we urged the Board to
14 deal with it in a generic fashion. At this time, in my
15 submission, the Board does have the jurisdiction to
16 control its own process and to make a statement on the
17 record if it so chooses.

18 Having said that, in our view, the Board
19 should exercise this jurisdiction with care and this is
20 given the public nature of this hearing and for all the
21 reasons, Mr. Chairman, that you outlined the first day
22 of the hearing in terms of encouraging wide media
23 contact and wide public participation in the hearing.

24 Any statement that the Board chooses to
25 make with respect to this matter, in our view, should

1 be a statement that falls within Rule 21 of the Law
2 Society rules. And, in our view, while the Board can
3 make a statement that would be analogous to Rule 21 and
4 can certainly control its own process and, in that
5 regard, extend the application of that rule to any
6 person appearing before the Board, we would caution the
7 Board in that regard.

8 Rule 21 is clearly something that is set
9 out for counsel pursuant to the code of professional
10 conduct. By extending the principles in that rule to
11 any member of the public that appears before the Board,
12 I can see some practical difficulties in enforcing that
13 in terms of the fact this is a public hearing, we have
14 not embarked upon the satellite hearings yet, if a
15 member of the public comes forward in a satellite
16 hearing, are they to put themselves in a position of
17 making statements to the press either after or before a
18 submission they may want to make to the Board and being
19 caught by surprise.

20 THE CHAIRMAN: Well, I don't think we are
21 really dealing - and I don't mean this, Mr. Cassidy, in
22 a pejorative way - seriously with the issue concerning
23 non-counsel or members of the public or parties, we are
24 dealing essentially I think with counsel or
25 representatives of parties who are acting in the

1 capacity of counsel before the Board.

2 Certainly the Law Society rules would
3 apply to counsel, I'm not sure that they would apply to
4 representatives who are acting as counsel but who
5 aren't counsel, because I would think the Law Society's
6 jurisdiction does not extend to them, and I think Ms.
7 Cronk only went so far yesterday in her submissions to
8 indicate that there might be a duty on counsel to
9 advise their clients, who are the parties before the
10 Board, as to what the ground rules may or may not be.

11 But I don't think you have to spend a lot
12 of time on a concern about the Board, if it chooses to
13 make a statement, that that statement will deal in any
14 way with the parties access or the public's access to
15 the media; it's basically interested, if it is going to
16 embark in this area, in trying to be of assistance to
17 counsel.

18 MS. SEABORN: That is helpful, Mr.
19 Chairman, because certainly that was one area of the
20 submissions that concerned by client the most.

21 As a practical problem, Mr. Chairman, I
22 think you put it quite well earlier in one of your
23 questions to Mr. Lindgren in the sense of getting down
24 to what should be the ground rules and what should we
25 be looking at and, in my submission, I think the ground

1 rules need to come from the code of professional
2 conduct.

3 I don't think that the Board can go
4 further than that, and the reason why I say that is
5 that I think that there is a problem in the sense that
6 what one party may view as an inaccurate statement to
7 the press may very well be in the mind of the person
8 who made it a very accurate statement, and I think that
9 we do get into problems of interpretation. We are
10 dealing with this generically. On the other hand,
11 people may make legitimate statements to the press as
12 to a characterization of the evidence which they firmly
13 believe is an accurate characterization of the evidence
14 and another party may take issue with that, and that is
15 where I see a practical problem with the Board trying
16 to go further in terms of making the guidelines too
17 specific, because I think that if that happens we will
18 be spending a lot of time in front of this Board
19 deciding whether the characterization was accurate or
20 not. And from my client's perspective, we think that
21 sort of time in front of the Board ought not to be
22 spent.

23 THE CHAIRMAN: Goodness knows we are
24 spending enough time on the evidence but we don't want
25 to spend a lot of time with this kind of issue in the

1 future.

2 What we are hoping to prevent, to the
3 extent that we can, is having to rule and take up the
4 time of the Board dealing with specific comments made
5 by specific counsel to the media.

6 MS. SEABORN: One of the other comments
7 that Ms. Cronk made with respect to the negotiations,
8 and I agree with her, that a number of guidelines will
9 have to be set out for the negotiation period; however,
10 I would submit to the Board that that is something that
11 counsel can agree upon as to how those negotiations
12 will be conducted and what communication there will be
13 during that period and that, in my submission, is a
14 different issue than the issue that is before the Board
15 this evening.

16 THE CHAIRMAN: Well, it was essentially
17 the Board's view - now that you have just raised that -
18 that counsel should be trying to work out the
19 guidelines relative to those negotiations.

20 The Board set out in its order some items
21 and at least some of the things we expect out of the
22 negotiations such as a written report, such as who was
23 there and when the negotiations took place and those
24 kinds of things. But it may well be that counsel
25 should at an early date get together, try and decide

1 some framework or ground rules for the conduct of those
2 negotiations - and I am not even sure that the Board
3 needs to approve them - but if there were some areas
4 that the parties couldn't agree on and wanted further
5 assistance from the Board in terms of setting some
6 guidelines, we might be prepared to do that.

7 MS. SEABORN: I can advise, Mr. Chairman,
8 in that regard that Mr. Campbell and I have sent a
9 letter to all full-time parties, I believe it went out
10 yesterday or this morning, inviting all full-time
11 parties to attend a meeting for the purpose of
12 discussing some of these preliminary matters and it
13 certainly was not our intention at this point to
14 involve the Board.

15 And just because we are on this topic, in
16 my view, I could only see this issue coming back to the
17 Board if the full-time parties had some real problems
18 with setting out how the negotiation process was going
19 to work.

20 THE CHAIRMAN: Right. And that was also
21 the Board's view of the matter.

22 MS. SEABORN: Those are my submissions,
23 Mr. Chairman.

24 THE CHAIRMAN: Thank you.

25 Ms. Kleer?

1 MS. KLEER: I too shall try to be brief.
2 I would first ask whether or not the Board has received
3 the submissions of Colborne and Kelly?

4 THE CHAIRMAN: Yes, we have.

5 MS. KLEER: All right.

6 THE CHAIRMAN: I should have mentioned
7 that, but we did receive the letter today. I take it
8 it has been distributed to other counsel.

9 MS. KLEER: Yes, it has. No?

10 MR. CASSIDY: I don't have it. Ms.
11 Bair-Muirhead about noon said she was going to give me
12 a copy, and I'm now being handed one. Thank you.

13 MS. SEABORN: (handed)

14 MS. KLEER: Okay. I would begin by
15 echoing the comments that were made by Mr. Lindgren on
16 the issue of jurisdiction and I will not repeat any of
17 that.

18 I would also suggest, however, that if
19 the Board does find it within its jurisdiction to make
20 a ruling on this matter and if the Board intends to
21 make a ruling setting out directions to counsel about
22 things that like contempt, I would suggest that what
23 has been put before the Board at this time is not
24 sufficient to make a ruling on it. There is a large
25 body of law out there that has not been considered on

1 that matter.

2 I would also just reiterate the point
3 about Rule 21, commentary 5; i.e., that guidelines
4 can't be promulgated to anticipate every position
5 circumstance.

6 There was a third submission of Ms. Cronk
7 and that was adopted by Ms. Murphy regarding urging a
8 particular result. I suggest that this kind of conduct
9 is nothing at all like contempt. This would not
10 influence the Board's decision and I would note here
11 paragraph 2 of Colborne and Kelly's letter to the
12 Board, and I would just urge you to read that. I would
13 suggest that urging a particular result is in fact
14 something like presenting the particular client's
15 position to the media and that to prohibit that kind of
16 suggestion to the media would be a clear limitation on
17 the freedom of expression, it would be saying you
18 cannot say what your party's position is, and I think
19 that's quite inappropriate.

20 Then turning to the issue of parties and
21 limits on the parties. I recognize and I appreciate
22 what the Board has said on the issue of not limiting
23 parties; however, you did make a comment about -- or
24 suggested that you might make a ruling regarding
25 counsel communicating to their client with respect to

1 how they should deal with --

2 THE CHAIRMAN: No, I think I indicated
3 that is what Ms. Cronk--

4 MS. KLEER: Okay.

5 THE CHAIRMAN: --put forward yesterday,
6 not necessarily the Board.

7 MS. KLEER: All right. Perhaps then I
8 can have a clarification. If the Board does not intend
9 to deal with that issue, then I will not make any
10 submissions on that point.

11 My position is that if the Board intends
12 to make some comments about that in its ruling, then I
13 have certain submissions.

14 THE CHAIRMAN: Well, I think at this
15 stage, to preclude you having to address that issue, I
16 don't think it would be the Board's intention in
17 dealing with this matter to set forward any kind of
18 guidelines or restrictions with respect to parties,
19 members of the public, or persons other than counsel,
20 save and except that category of persons before the
21 Board acting in the capacity of counsel.

22 MS. KLEER: Okay.

23 THE CHAIRMAN: And again -- Dr.
24 Quinney...

25 DR. QUINNEY: It's Quinney.

1 THE CHAIRMAN: I'm sorry, it's been a
2 long day.

3 DR. QUINNEY: It's okay, Mr. Chairman, it
4 has been a long day.

5 THE CHAIRMAN: As you are aware, we are
6 referring essentially to both yourself and Mr. Hanna,
7 who the Board has accorded the opportunity to appear as
8 counsel, although neither of you are counsel nor are
9 regulated by the Law Society. I don't think it applies
10 necessarily to any of the other parties at the moment,
11 although it might well apply to other parties in terms
12 of satellite hearings because as we move around or
13 later in the proceedings for that matter.

14 MS. KLEER: All right. I just have one
15 submission then that I would make. If it is the
16 Board's intention to, as part of its ruling, suggest
17 that counsel should make general comments to their
18 clients about how they deal with the public, then I
19 would suggest as a practical matter that's very
20 difficult from my clients' perspective as the clients
21 are far and wide spread out and it would be impossible
22 to communicate with all of them.

23 Those are my submissions. Thank you, Mr.
24 Chairman.

25 THE CHAIRMAN: Thank you.

1 Mr. Edwards?

2 MR. EDWARDS: Thank you, Mr. Chairman.

3 Mr. Chairman, I will be nine and a half minutes, no
4 longer.

5 THE CHAIRMAN: Just a minute, I want to
6 set my alarm.

7 MR. EDWARDS: I have got mine going, Mr.
8 Chairman.

9 Mr. Chairman, I had planned not to make
10 any submissions today; however, I had the benefit of
11 reading the thoughtful submissions made by Ms. Cronk
12 and there is a couple of things that were raised in
13 there that do concern me. And just by way of a general
14 commentary before I address those specific issues, I do
15 think that the laws of libel and slander limit and
16 protect, limit speech and protect legitimate interests.
17 The rules of professional conduct have the same effect
18 in different circumstances. This Board of its on
19 motion may take some steps which have the same effect
20 of limiting particular types of speech to protect
21 legitimate interests.

22 On the utility analysis, however, I
23 wonder what the purpose of going along with the
24 submission of the counsel for OFIA would result in,
25 except perhaps a result that would be, I think, the

1 aggravation of a circumstance rather than the
2 amelioration of the circumstance.

3 Counsel throughout this entire hearing in
4 my view have conducted themselves with a great deal of
5 civility, courtesy and cooperation with one another and
6 I don't see that this is going to achieve anything.

7 The first rule of medicine is: Do no
8 harm, do not intervene, more colloquially: If it ain't
9 broke, don't fix it. And it's my submission that there
10 is nothing wrong with the proceeding as it is taking
11 place in terms of the conduct of counsel, and I would
12 urge that the Board be very cautious in entering on
13 this area.

14 The interests of the parties, in my view,
15 are hardly served by this except with the possible
16 exception of the most general reaffirmation of what is
17 set out in the rules of professional conduct. I echo
18 Ms. Seaborn's submission to you that if you wish to
19 make any direction, that really you would only draw
20 counsels' attention to the duties and obligations that
21 are there. There are many remedies available for a
22 party which feels that other counsel has gone too far.

23 With respect to the particular
24 submissions of Ms. Cronk, however - which cause me to
25 actually rise today and make some submissions - I'm

1 referring to what is page 23 of the transcript which I
2 have a copy of. It's the submissions of Ms. Cronk and
3 in that, if I may just briefly quote, she asks the
4 Board to articulate in a decision:

5 "...what standard of conduct is to govern
6 the actions of legal counsel in
7 communications in and with the media in
8 the future and those persons appearing by
9 virtue of your courtesy..."

10 And Ms. Cronk suggested that they will
11 have three components. I will disagree with numbers 1
12 and 3 and I will support her with respect to No. 2.

13 The first submission is that there should
14 be no criticism of other parties or of other legal
15 counsel with the press or media without the matter
16 first having been raised here. I would not support
17 anybody who is criticizing other legal counsel and I
18 cannot imagine in a hearing of this scope and of this
19 importance that some parties or their counsel may not
20 say some things at some stage which might be deemed to
21 be critical of another party.

22 For example, the Ministry of Natural
23 Resources is a vast, a large government agency which
24 affects the interests of all our clients throughout
25 Ontario and if you can't criticize at some stage that

1 party in any fashion without raising it here, that is
2 very difficult because we don't really get
3 opportunities to make speeches like this very often.

4 I mean, this case has gone on for a year
5 and a half and we haven't really been able to say our
6 piece here, and if I have to wait for another year and
7 a half before I get a chance to say my piece, the
8 interests of my client, in their view, will be
9 prejudiced. And to make a point which is an honest,
10 legitimate point which happens to be critical of the
11 party does not necessarily, as Ms. Cronk suggests,
12 imply criticism of counsel.

13 Ms. Murphy and Ms. Blastorah and Mr.
14 Freidin have conducted their case with very fair and
15 very competent representation. They have had witnesses
16 who throughout have appeared to be - I don't know - the
17 nicest guys in the history of the world; a combination
18 of Robert Young from Father Knows Best and St. Francis
19 of Azizzi. They may all be very wonderful individuals;
20 however, that is not to say that my clients at some
21 stage may not wish to say that the iron law of
22 bureacracy will result in these nice group of people
23 doing things which may have a negative impact on their
24 activities. And it would be wrong, in my submission,
25 to adopt a standard of conduct which requires that we

1 have to say it here before anything critical could be
2 said.

3 Obviously criticism of counsel is
4 something which is a little different than criticism of
5 a party, and I have particular reference to the
6 Ministry whose case has gone on for so long. So it is
7 not, in my respectful submission, automatically a
8 criticism of legal counsel when one says something
9 which might be critical of a party.

10 At page 26 of the submissions of Ms.
11 Cronk, she suggests that counsel must not, as she
12 indicated previously, expressly or implicitly criticize
13 the Board in the media by suggesting unfairness in the
14 Board's procedure. She is bang on on that one and I
15 take no issue with that.

16 However, the third component of the
17 standard is that one cannot argue in the media or urge
18 a particular result in a matter pending before the
19 Board, because to do so creates or runs the risk of
20 creating, in the public eye, the appearance of indirect
21 or direct efforts to influence the outcome of a
22 decision by the Board. The Board, with respect, is not
23 a jury which requires to be sequestered so that it is
24 untainted by the poison of the public media.

25 THE CHAIRMAN: It may come as a surprise,

1 the Board even reads the papers.

2 MR. EDWARDS: I understand that, Mr.
3 Chairman.

4 My point is this, that one ought not to
5 be precluded from suggesting in response to a media
6 question that, for example, that one prefers tourism
7 representatives on the timber management planning team,
8 one prefers habitat supply analysis to the MNR's
9 proposals, that one prefers active and proactive
10 involvement by native communities with perhaps special
11 rules to apply to native communities to assist
12 community development.

13 Those types of things are fair comment on
14 matters of public interest, would never be libelous or
15 slanderous and, in my respectful submission, ought not
16 to be part of the standard, ought not to be part of the
17 standard to preclude that one cannot argue in the media
18 with respect to a particular result that one hopes to
19 achieve before the Board.

20 The results of this hearing will be three
21 years maybe - we hope not - but maybe three years away.
22 Obviously, the positions of all of the parties are very
23 legitimate and it could be legitimately expressed in
24 the press.

25 I think Ms. Cronk in her choice of

1 language there perhaps went a little further than she
2 ought to have in suggesting that one can never, in any
3 circumstances, urge a particular result in a matter
4 pending before the Board. The matter pending before
5 the Board is the terms and conditions that may be
6 imposed and, obviously, I think it is a matter of
7 public interest what persons believe those could be.
8 Appropriate of counsel, of course, to raise that matter
9 here at first, if it is possible.

10 I do note, Mr. Chairman, that it may be
11 helpful for you to provide some guidance in the most
12 general of fashions but, beyond that, I would suggest
13 that the Board really ought not to go because it will
14 imply I think a criticism of counsel, may poison the
15 atmosphere of going into these negotiations and that,
16 in a utility analysis, would be counterproductive for
17 us all.

18 The persons that are upset about the
19 particular articles that we are not discussing today
20 may have a particular cross to bear as a particularly
21 powerful interest and one that's well able to protect
22 itself. It has very competent counsel and obviously
23 access to the media if it needs to do that.

24 My respectful submission is, the Board
25 should be very cautious in doing anything beyond

1 reaffirming the wisdom of the rules of professional
2 conduct.

3 Those are my submissions, Mr. Chairman.
4 Nine and a half minutes.

5 THE CHAIRMAN: I hesitate to ask whether
6 you had a dry run to get the timing right?

7 MR. EDWARDS: I wasn't going to say
8 anything until I got here.

9 THE CHAIRMAN: Okay. Thank you, Mr.
10 Edwards.

11 MR. EDWARDS: Thank you, Mr. Chairman.

12 THE CHAIRMAN: Dr. Quinney?

13 DR. QUINNEY: Mr. Chairman, I have
14 genuine concerns regarding the submissions of Ms. Cronk
15 last night and --

16 THE CHAIRMAN: Can you come to the
17 microphone, please.

18 DR. QUINNEY: Sure. Just to repeat, I
19 have genuine concerns regarding the submissions of Ms.
20 Cronk last night and Ms. Murphy this evening. Some of
21 them have been clearly identified by Mr. Edwards a few
22 brief moments ago.

23 Regretfully Mr. Hanna could not attend
24 here this evening; however, he will be here tomorrow
25 afternoon in order to conduct a cross-examination. I

1 would ask the Board if we could reserve the right to
2 make a very brief submission to the Board when Mr.
3 Hanna is present?

4 THE CHAIRMAN: Very well.

5 DR. QUINNEY: Thank you.

6 THE CHAIRMAN: Okay, ladies and
7 gentlemen, if there is nobody else to hear from
8 tonight --

9 MR. CASSIDY: Mr. Chairman, I assume upon
10 the completion of Mr. Hanna's remarks --

11 THE CHAIRMAN: You will have a right of
12 reply, Mr. Cassidy.

13 MR. CASSIDY: Thank you.

14 THE CHAIRMAN: And then we will conclude
15 the submissions with respect to this issue, and then
16 the Board will decide what it will choose to do in this
17 matter. Don't expect something the day after, it may
18 be a little while.

19 Thank you. We will adjourn until 8:00
20 a.m. tomorrow.

21 ---Whereupon the hearing adjourned at 7:05 p.m., to be
22 reconvened on Wednesday, November 21st 1989,
commencing at 8:00 a.m.

23 [copyright, 1985]
24
25

